Supreme Court, U.S.
FILED
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OFFICE OF THE CLERK

No. 07-__ 07-193

IN THE

Supreme Court of the United States

IRONS LLC,
Petitioner,

v.

WILLIAM FREDERICK BRANDES,
Respondent.

On Petition for a Writ of Mandamus to the United States Court of Appeals for the District of Columbia Circuit

PETITION FOR A WRIT OF MANDAMUS

EDWARD S. IRONS
3945 - 52nd Street, N.W.
Washington, D.C. 20016
(202) 362-5332

August 10, 2007

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20002

QUESTIONS PRESENTED

1. Whereas the United States Court of Appeals for the District of Columbia Circuit has ordered that Appeal No. 07-7031 "was filed and docketed on 2/28/07" (App. B; 3a), and whereas the Court of Appeals has not set an appellate briefing schedule for Appeal No. 07-7031, and whereas the Court of Appeals has absolutely ignored "Appellant's Motion Under Judicial Canon 3B(2) Requesting Appellate Briefing Schedule" (App. K; 71a), question 1 is whether the failure and refusal of the Court of Appeals to set a schedule for the filing of briefs on the merits of Appeal No. 07-7031 pending before it violates each of (i) appellant's Constitutional right to be heard as to the merits of the appeal; (ii) the Court's duty to "hear and decide" imposed by Canon 3B(1) and (iii) the Court's duty to be "faithful to the law" imposed by Canon 3B (2).

2. Whether recusal is required under Canon 1 or 28 U.S.C. §455(a) because the statements of the United States District Court for the District of Columbia at the November 8, 2006 Scheduling Conference (App. F; 25a) lack probity contrary to Canon 1 or "reveal such a high degree of favoritism or antagonism as to make fair judgment impossible". *Liteky v. United States*, 510 U.S. 540, 555 (1994).

LIST OF PARTIES

The caption of this case contains the names of all of the parties, i.e., Irons LLC (Petitioner/Plaintiff) and William Frederick Brandes (Respondent/Defendant).

CORPORATE DISCLOSURE STATEMENT

Irons LLC is a Virginia limited liability corporation. The Articles of Incorporation of Irons LLC were filed December 3, 2002 (App. E; 15a). There is no publicly held company that owns 10% or more of Irons LLC's corporate stock.

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IN THE

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No. 07-___

IRONS LLC,

Petitioner,

v.

WILLIAM FREDERICK BRANDES,

Respondent.

On Petition for a Writ of Mandamus to the United States Court of Appeals for the District of Columbia Circuit

---

PETITION FOR A WRIT OF MANDAMUS

ORDERS OF THE COURTS

Order dismissing the Complaint was entered in the United States District Court for the District of Columbia in Civil Action No. 1:06CV00904JR on February 15, 2007 (App. C and App. D; 5a, 6a).

Orders entered in the United States Court of Appeals for the District of Columbia Circuit in Appeal No. 07-7031 are listed as follows:

	Date
Order (acknowledging that case was filed and docketed on 2/28/07, and stating: "FURTHER ORDERED that briefing in this case is deferred pending further order of the Court")	03/07/07

(App. B; 3a).

Order (denying, *inter alia*, Appellant's (i) Motion for Remand, (ii) Motion for Disqualification of Counsel, and (iii) Motion to Recuse the District Court Judge) 06/12/07

(App. A; la).

JURISDICTIONAL STATEMENT

(a) This Petition is filed within 90 days of "the judgment or order sought to be reviewed", which was entered June 12, 2007 (App. A; la).

(b) The "basis" for federal jurisdiction in the court of first instance, *i.e.*, the United States District Court for the District of Columbia, is set forth in the First Amended Complaint (App. E; 11a) at paragraphs 3-5:

1. This Court has jurisdiction of this case under 28 U.S.C. §1332.

2. There is complete diversity of citizenship as between the plaintiff and the defendants.

3. The amount in controversy is in excess of $75,000, excluding interest and costs. (App. E; 12a)

(c) There is no "order respecting rehearing" nor "any order granting an extension of time to file the petition for writ of certiorari".

(d) The "statutory provision believed to confer on this Court jurisdiction to review" the order in question is 28 U.S.C. §1651.

CONSTITUTIONAL PROVISIONS, STATUTES, RULES

(a) Amendment V to the United States Constitution:

No person shall be . . . deprived of life, liberty, or property, without due process of law; nor shall private

property be taken for public use, without just compensation. [Emphasis added.]

(b) United States Code

28 U.S.C. §455, "Disqualification of justice, judge or magistrate judge"

(a) Any justice, judge, or magistrate judge of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

28 U.S.C. §1651, "Writs"

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(c) Supreme Court Rules

Rule 20. Procedure for a Petition for an Extraordinary Writ

1. Issuance by the Court of an extraordinary writ authorized by 28 U.S.C. §1651(a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

(d) Federal Rule of Civil Procedure 12(b)(6)

Rule 12. DEFENSES AND OBJECTIONS—WHEN AND HOW PRESENTED—BY PLEADING OR MOTION—MOTION FOR JUDGMENT ON THE PLEADINGS

* * *

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counter claim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: . . . (6) failure to state a claim upon which relief can be granted, . . . [Emphasis added.]

(e) American Bar Association Rules of Professional Conduct

RULE 8.4. MISCONDUCT

It is professional misconduct for a lawyer to:

* * *

(c) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(f) ABA Annotated Model Code – Judicial Canons

CANON 1—A JUDGE SHALL UPHELD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY

CANON 2—A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

* * *

CANON 3—A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

* * *

(B)(1)—*Duty to Hear and Decide*

> (1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(B)(2)—*Professional Competence and Freedom from Partisanship*

> (2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

CONCISE STATEMENT OP THE CASE

This is a diversity case.

In its complaint, the petitioner, corporate plaintiff LLC, alleges in Count 1 that certain assignments to defendant of an interest in the LLC were fraudulently procured.

In Count 2 of the Complaint, Irons LLC contends that defendant has "willfully and purposefully violated Sections 15A and 15B of the [LLC's) Operating Agreement". Compl. 137 (App. E; 20a).

At the November 8, 2006 Scheduling Conference (App. F, 25a), the District Court first put maximum judicial pressure on the plaintiff/petitioner's counsel to dismiss the complaint. After plaintiff refused to yield to that pressure, the District Court abrogated its duty to "hear and decide" (Canon 3B(1)) by enlisting the filing by defendant of an undefined "motion to dismiss" (App. F; 32a) which the District Court apparently had already decided to grant regardless of the grounds that might be said to justify dismissal. The defendant then filed his Rule 12(b)(6) Motion to Dismiss (App. G; 43a), which was granted. In that Improper way, the District Court accomplished its goal of deleting this case from its docket.

At the Scheduling Conference held on November 8, 2006 (App. F; 25a to 42a), the District Judge stated to petitioner's counsel:

> THE COURT: I called this status conference because this case is definitely getting off on the wrong foot.
>
> Mr. Irons, you are representing yourself in this case, or Irons L.L.C. Is that correct?[1]
>
> MR. IRONS: Well, I'm representing the limited liability corporation, yes, sir, that is correct.
>
> THE COURT: Well, maybe you can tell me why I have jurisdiction of this case, just for openers. Do you want to step up here to the podium?
>
> MR. IRONS: This is a diversity case, and the amount in controversy is over $75,000. [Tr. 2, 11. 5-15; App. F, 26a); emphasis added.]
>
> * * *
>
> THE COURT: This looks to me like an ugly family squabble. I don't think it belongs in federal court in the first place. There may be a motion to dismiss for want of jurisdiction.[2] What is it you want out of this case, Mr. Irons, besides some form of revenge against your son-in-law?
>
> MR. IRONS: What I want out of this case is set forth in my proposed settlement and scheduling order. It says

---

[1] The point here is that the District Court purposely failed to acknowledge that the corporate plaintiff, Irons LLC, is a legal entity separate from Edward S. Irons, as an individual.

[2] This suggestion by the District Court was an invitation to defendant's counsel to violate Fed.R.Civ.P. 11 because the presumptively true record then showed that the District Court had jurisdiction of this case. No such motion was filed by defendant. See the quotation of Complaint paragraphs 3-5, *ante*, p. __.

what it says. It says that I think that the defendant should assign to his daughter or to his wife the interest which he owns, if any, in the plaintiff, Irons, L.L.C. Essentially that is all I want.

THE COURT: Well, maybe he should. But what legal right does Irons, L.L.C. assert to compel that result?

MR. IRONS: That is what the substance of the complaint is, yes.

THE COURT: I know. But teach me about it.

MR. IRONS: Sorry?

THE COURT: Teach me. Why are you going to win in this case?

MR. IRONS: Why are we going to win?

THE COURT: Yeah.

MR. IRONS: We're going to win because the assignments of interest in the L.L.C. to the defendant, Mr. Brandes, were improperly and fraudulently procured. [Tr. 9, l. 24 to Tr. 10, l. 21; App. F, 32a-33a]; Emphasis added.]

* * *

THE COURT: Well, this case doesn't sound like a federal lawsuit to me. I mean, frankly, it's a nice juicy human interest ugly story, and it might make life a lot more interesting for us around here than the ordinary run of federal lawsuits do, but it doesn't belong here.[3] It doesn't belong in any court, as far as I can tell. It sounds to me like this is an angry father getting some revenge for his daughter's divorce. [Tr. 13, 11. 14-20; emphasis added; App. F, 35a].

---

[3] This statement by the District Court violates Rule of Professional Conduct 8.4(c) because it simply is not true. The undisputed record showed that the District Court had jurisdiction of this case.

* * *

> THE COURT: All right. Well, I've pushed this about as far as I can. Mr. Grant has accepted service of process on behalf of his client; his answer or motion or other response to the first amended complaint is due the 24th of November.
>
> It is my hope that the parties will agree between now and then that it makes sense for this matter to go off to mediation, and that the mediation follow the completion of the divorce negotiations.
>
> If you can't agree to that, then you won't agree to it, and the next thing I'll see is an answer or motion from the defendant and we'll just proceed along the normal track of litigation.
>
> MR. IRONS. Very well.
>
> THE COURT: I repeat to both of you, this case I don't think belongs in federal court, but we'll see the motion if we have to see the motion.[4] [Tr. 22, l. 21 to Tr. 23, l. 10; emphasis added; App. F, 42a]

"Defendant's Motion to Dismiss [not for lack of jurisdiction because Fed.R.Civ.P. 11 barred such a motion, but under Fed. R. Civ. P. 12(b)(6)] and for Costs Pursuant to Rule 41(d)" (App. G; 43a) was filed on November 22, 2006—fourteen days after the District Court's untrue repudiation of his duty to "hear and decide" (Canon 38(1)) at the November 8, 2006 Scheduling Conference (App. F; 25a).

The District Court, as he surely had improperly determined to do *a priori*, granted the defendant's Rule 12 (b) (6) motion by its February 15, 2007 Order (App. C; 5a) and Memorandum (App. D; 6a).

---

[4] See footnote 2, *supra*. These statements by the District Court are actually a predetermined refusal to "hear and decide" contrary to Canon 3B(1).

The February 15, 2007 District Court Order reads:

> For the reasons set forth in the accompanying memorandum, defendant's motion to dismiss (under Fed.R.Civ.P. 12(b)(6)] and for costs [#12] is granted, except for attorney's fees. All other pending motions [## 3, 13, 14, 15, 26 and 27) are denied. This case is dismissed. This is a final, appealable order. [App. C; 5a); same emphasis added.]

The District Court's Memorandum (App. D; 6a) cited by the February 15, 2007 dismissal order (App. C; 5a) states, in part:

> At an initial scheduling conference held in open Court on November 8, 2006, I questioned Edward Irons about his assertion of diversity jurisdiction and asked whether his case was not indeed that of an angry father against a now-disfavored son-in-law. I gave voice to my preliminary view that this case does not belong in federal court and urged the parties to consider mediation, something in which neither side seemed to have much interest. I suggested that the defendant test the adequacy of the complaint with a motion to dismiss.
>
> Defendant did move to dismiss, on November 22, 2006, and he moved pursuant to [Rule 12(b)(6) and] Rule 41(d) of the Federal Rules of Civil Procedure for costs, including attorney's fees, because plaintiff had previously dismissed an action in this Court and because the present action is based upon or includes the same claim against the same defendant as the earlier action. [pp. 2-3; App. D, 7a)

Petitioner Irons LLC filed a timely Notice of Appeal (App. J; 69a) on February 22, 2007 which states, in part:

> Irons LLC, the plaintiff, appeals to the United States Court of Appeals for the District of Columbia Circuit

from the final Order of the United States District Court for the District of Columbia entered in this case on February 15, 2007 granting Defendant's Motion to Dismiss and for costs, except for attorney's fees, and denying the following motions filed by plaintiff:

Motion No.	Title	Filed
3	Plaintiff's Motion for Attorney Fees	10/05/06
13	Plaintiff's Motion to Disqualify Counsel	11/24/06
14	Plaintiff's Motion for Recusal	11/24/06
26	Plaintiff's Motion to Enforce D.R. 2-110(B)(2)	01/10/07
27	Plaintiff's Motion for Sanctions Under D.R. i-102(A)(4) and R.P.C. 8.4(c) and (d)	01/10/07

On June 11, 2007, petitioner Irons LLC filed a still-pending "Motion Under Judicial Canon 3B(2) Requesting Appellate Briefing Schedule" (App. K; 71a) in the Court of Appeals.

ARGUMENT

The District Court initially pressured plaintiff to dismiss the complaint. Failing that/ the District Court invited the defendant to file a non-specific motion to dismiss. The defendant filed a Fed.R.Civ.P. 12(b)(6) motion to dismiss (App. G, 43a) the complaint for failure to state a claim. As intended a priori, the District Court dismissed the complaint (App. C, 5a).

However, the District Court failed to make the necessary finding essential to the grant of a Fed.R.Civ.P. 12(b)(6) motion that the defendant had discharged his burden to prove that the plaintiff cannot prevail on any set of facts.

The defendant acknowledged that motions to dismiss are disfavored and will not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Tibbs v. Williams*, 263 F.Supp.2d 39, 41 (D.D.C. 2003) (citations and internal quotation marks omitted).

REASONS FOR GRANT OF PETITION

1. This Petition should be granted because all the mandatory conditions set forth in Rule 20.1 are satisfied.

2. The appellate order sought to be reviewed (i) violates petitioner's Constitutional "due process" rights and (ii) conflicts with *Liteky v. United States*, 510 U.S. 540 (1994).

3. The Appendix to this Petition includes documentary record evidence that shows misconduct of the District Court Judge James Robertson that specifically violates Rule of Professional Conduct 8.4(c) and Judicial Canons 2, 2A and 3. Public confidence in and trust of the federal judicial system requires that this judicial misconduct must not be covered up by silence.

COMPLIANCE WITH RULE 20.1

Pursuant to Rule 20.1, the writ of mandamus will "aid . . . the Court's appellate jurisdiction" because (i) Rule 11 precludes filing of a petition for writ of certiorari "before judgment", absent a "showing" that Petitioner cannot make, and (ii) judgment has not been entered by the Court of Appeals. The relief sought by this petition includes entry of the appellate judgment which is prerequisite to certiorari jurisdiction.

"[E]xceptional circumstances [that] warrant the exercise of the Court's discretionary powers" exist because the District Court and the Court of Appeals have abrogated the "duty to hear and decide" imposed by Canon 3B(1) and the duty to "be faithful to the law" imposed by Canon 3B(2). Because the Court of Appeals has ignored petitioner's "Motion to Set a Briefing Schedule" (App. K; 71a) and because the relief sought by this Petition is an order that requires the Court of Appeals to set a briefing schedule, "adequate relief cannot be obtained in any other form or from any other court". Only this Court has jurisdiction to issue the necessary order.

Respectfully submitted,

EDWARD S. IRONS
3945 - 52nd Street, N.W.
Washington, D.C. 20016
(202) 362-5332

August 10, 2007

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

[Filed June 12, 2007]

No. 07-7031
September Term, 2006
06cv00904

IRONS, LLC, a Limited Liability Corporation,
Appellant,

v.

WILLIAM FREDERICK BRANDES,
Appellee.

ORDER

BEFORE: Ginsburg, *Chief Judge*, and Sentelle and Henderson, *Circuit Judges*.

Upon consideration of the motion to remand the case to the district court, the opposition thereto, and the reply; the lodged motion for summary reversal (styled "motion to vacate"); the motion to disqualify attorney Robert E. Grant (appellee's counsel) and for sanctions (styled "objection to entry of appearance by Grant"); the motion to recuse the district court judge; and the motion for extension of time to file any dispositive motion or appellant's opening brief until 10 days after an order on the motion to remand has been entered, it is

ORDERED that the motion for extension of time to file any dispositive motion be granted. The Clerk is directed to file the lodged motion for summary reversal. It is

FURTHER ORDERED that the motions for summary reversal and to remand be denied. The merits of the parties' positions are not so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C. Cir. 1987) (per curiam). It is

FURTHER ORDERED that the motion to disqualify Robert E. Grant and for sanctions be denied. Appellant provides no grounds for disqualification or for sanctions. It is

FURTHER ORDERED that the motion to recuse the district court judge be denied. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.").

Per Curium

APPENDIX B

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

[Filed MAR. 7, 2007]

No. 07-7031
September Term, 2006
District Ct. No: 06cv00904

IRONS, LLC,

Appellant,

v.

WILLIAM FREDERICK BRANDES,

Appellee.

ORDER

This case was filed and docketed on 2/28/07.

It is ORDERED that appellant(s) shall submit the following document(s) (original and one copy required, unless otherwise noted) by the indicated date(s):

4/06/07 Report certifying that all necessary transcripts, if any, have been ordered and a statement that satisfactory financial arrangements have been made with the reporter. The report shall identify which transcript(s) have been ordered and the name(s) of the reporter(s) involved. A copy of the report shall be served on each reporter.

4/06/07 Docketing statement.

4/06/07 Entry of Appearance form.

4/06/07 Two copies of the underlying decision.

4/06/07 Statement of issues to be raised.

4/06/07 Certificate of Counsel (Cir.. R. 28(a)(1)).

4/06/07 Original and four copies of procedural motions which would affect the calendaring of this case.

4/06/07 Statement as to whether or not a deferred appendix under F.R.A.P. 30(c) will be utilized. (A motion will not be necessary.)

4/23/07 Dispositive motions, if any. *See* Cir. R. 27(g). (Original and four copies.)

It is FURTHER ORDERED that appellee(s) shall submit the following document(s) (original and one copy required, unless otherwise noted) by the indicated date(s):

4/06/07 Certificate of Counsel (Cir. R. 28(a)(1)).

4/06/07 Entry of Appearance form.

4/06/07 Original and four copies of procedural motions which would affect the calendaring of this case.

4/23/07 Dispositive motions, if any. *See* Cir. R. 27(g). (Original and four copies.)

It is FURTHER ORDERED that appellant submit a status report concerning transcript preparation every thirty days until the transcript has been completed and received. Within three days of receipt of all transcripts, appellant shall file a Final Status Report which indicates the date the complete transcript was received. All reports shall be served on the parties and each Reporter.

It is FURTHER ORDER that briefing in this case is deferred pending further order of the Court.

FOR THE COURT:
Mark L Langer, Clerk

By: /s/ Elizabeth V. Scott
ELIZABETH V. SCOTT, Deputy Clerk

Initial Submissions 86-6 (June 1992)

APPENDIX C

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed FEB. 15, 2007]

Civil Action No. 06-0904 (JR)

IRONS, LLC,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

ORDER

For the reasons set forth in the accompanying memorandum, defendant's motion to dismiss and for costs [#12] is *granted*, except for attorney's fees. All other pending motions [## 3, 13, 14, 15, 26 and 27] are *denied*. This case is *dismissed*. This is a final, appealable order.

JAMES ROBERTSON
United States District Judge

APPENDIX D

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

[Filed FEB. 15, 2007]

Civil Action No. 06-0904 (JR)

IRONS, LLC,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

MEMORANDUM

Edward S. Irons is the managing member of plaintiff Irons, LLC, and the father of Carin Brandes. Carin Brandes is the wife of defendant William Brandes. At some point during the marriage of Carin and William, Edward Irons and his wife, Mary Lee Irons, as trustees of revocable trusts, assigned interests in Irons, LLC to their son-in-law. Edward and Mary Irons also gave money to their daughter and son-in-law for the purchase of a second home in Easton, Maryland. Now it seems that Carin and William are divorcing. What brings their divorce to federal court is a suit by Irons, LLC—represented by Edward Irons—for fraud. The suit advances a number of claims:

- that William fraudulently procured the assignment of an interest in the LLC, knowing, but not disclosing, that his marriage to Carin was "unstable";
- that William's offer to assign all or part of his interest in the LLC to Carin as part of the divorce settlement violates the LLC's operating agreement;

- that Edward and Mary have an equity interest in the Eastern Shore property purchased with the money they gave to their daughter and son-in-law; and
- that William's lawyer has conspired with his client to alienate William's interest in the LLC, and that he (the lawyer) behaved unethically by representing William both in his divorce proceeding and in this action.

At an initial scheduling conference held in open Court on November 8, 2006, I questioned Edward Irons about his assertion of diversity jurisdiction and asked whether his case was not indeed that of an angry father against a now-disfavored son-in-law. I gave voice to my preliminary view that this case does not belong in federal court and urged the parties to consider mediation, something in which neither side seemed to have much interest. I suggested that the defendant test the adequacy of the complaint with a motion to dismiss.

Defendant did move to dismiss, on November 22, 2006, and he moved pursuant to Rule 41(d) of the Federal Rules of Civil Procedure for costs, including attorney's fees, because plaintiff had previously dismissed an action in this Court and because the present action is based upon or includes the same claim against the same defendant as the earlier action.

It appears, indeed, upon a review of the docket of Civil Action No. 06-297, on file in this Court, that, on February 21, 2006, the same plaintiff, Irons, LLC, sued the same defendant, William Frederick Brandes, for essentially the same wrongs asserted in this case, including violation of William's asserted duty of disclosure, knowing that his marriage was unstable (Compl. ¶ 20, ¶ 24), and sought much of the same relief that he is seeking in this action. Irons, LLC, filed a Rule 41(a)(1) dismissal of that case on March 28, 2006, one week

after Brandes moved to dismiss, and filed the present case on May 12, 2006.[1]

An award of costs to defendant under Rule 41(d), as the term "costs" is generally understood, would be de minimis: there have been no subpoenas, no court reporters fees, no deposition costs, and defendant did not put up the money for the original filing fee. Some authorities say that the costs available under Rule 41(d) "have generally been held to include attorneys' fees." Moore's Federal Practice § 41.70[6]. *Rogers v. Wal Mart Stores, Inc.*, 230 F.3d 868, 874 (6th Cir. 2000), however, the most recent appellate decision on the point and easily the best-reasoned and most persuasive, holds that attorneys fees are *not* available under Rule 41(d), for the simple reason that the Rule does not explicitly provide for them. *See also Esposito v. Piatrowski*, 223 F.3d 497, 501 (7th Cir. 2000) (fees included as costs under Rule 41(d) only where underlying substantive statute that is basis of first lawsuit also includes fees as costs). Defendant's invitation to include an award of attorney's fees will be denied. If defendant did incur any taxable costs in connection with the previously dismissed action, *see* 28 U.S.C. § 1920, he may have 30 days from the date of this order to **submit a bill of costs**.

Turning to the motion to dismiss:

Defendant's response to plaintiff's first claim, of fraudulent procurement of shares of Irons LLC through failure to reveal instability in a marriage, asserts that Irons LLC either lacks standing or is not the real party in interest, because it was Edward and Mary Lee, as trustees of their revocable trusts, and not Irons LLC, who transferred the shares to William. Irons LLC replies that it has a power of attorney from Edward

---

[1] The present case should perhaps have been assigned to Judge Collyer as a related case, *see*, LCvR 40.5(a)(3), since Edward Irons is essentially representing himself.

and Mary Lee—but that power, [#8] exhibit 5, quoted [#16] at p. 8, was given, not by Edward as trustee of his revocable trust, or by Mary Lee as trustee of hers, but by Edward and Mary Lee in their individual capacities, and it purports to transfer nothing more than the power to "conduct all business matters of any kind whatever pertaining to, relating to or involving their . . . *interest in the . . . Easton, Maryland property*." (Emphasis added.) Thus, even if instability in marriage could ever be a material fact, and the omission to disclose it could ever constitute fraud (think of the implications of that proposition upon the underpinnings of commerce in this nation!), Irons LLC has no demonstrated interest in Count 1.

Count 2 alleges that William has "alienated" his interest in Irons LLC to finance his divorce litigation and by offering it to Carin as part of the divorce settlement, asserting that such "alienation" violates sections 15A and 15B of the LLC's operating agreement [#8] exhibit 2, which essentially prohibit the sale, transfer, or hypothecation of shares in LLC except upon proper notice and consent. But Edward Irons does not need any relief from a court on this claim: the Operating Agreement upon which he relies provides him the means to employ self help: section 15B provides that no assignee becomes a member of the company without his consent, as managing member. If an attorney has accepted a pledge of William's shares in the LLC as payment for his services, he may have a problem translating the pledge into money, and if Edward wants to deny his own daughter membership in the LLC, that's his business. This is a case of *damnum absque injuria*, and Count 2 fails to state a claim which relief can be granted.

Defendant is correct that Count 3 is "fatally vague." [#12-1] at 6 and that "under the minimal requirements of notice pleading, Rule 8 requires that the complaint give the defendant fair notice of each claim and its basis." *Gore v. First*

Union Nat'l Bank, 2002 U.S. Dist. LEXIS 14396 *11 (D.D.C. July 28, 2002). The complaint does not quite say what agreement or business relationship Count 3 refers to, except possibly an (oral?) agreement that William would negotiate for the purchase by Irons LLC of a parcel of land contiguous to the house that he and Carin purchased with Carin's parents' money—an undertaking that, as Irons LLC acknowledges, Williams in fact carried out successfully. Presumably the claim of "destroying or injuring the rights of plaintiff . . . to [plaintiff's] agreements, purposes and expectations," [#8] para. 43, means that Edward and Mary no longer have the "love and affection" for William that was the only consideration for their assignment of Irons LLC shares to him, [#8] exhibits 4, 5, and that living on the contiguous land would not be pleasurable for them, but the law provides no compensation for such injuries.

Count 4 alleges professional misconduct by William's lawyer, who is not a party to this litigation, and attempts somehow to charge William (who is not identified in the record as a lawyer) with concerted conduct prejudicial to the administration of justice. Count 5 seeks the disqualification of William's lawyer on ground that the lawyer has a conflict of interest in representing him both in this action and in his divorce. Neither claim has any legal merit, as plaintiff's counsel (Carin's father) certainly should know. Defense counsel may wish to consider filing a motion for consideration of Counts 4 and 5 under Rule 11(c)(1)(A)—unless he feels, as I do, that his higher duty is to seek peace in the Irons family.

JAMES ROBERTSON
United States District Judge

APPENDIX E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1:06CV00904JR

IRONS, LLC, A Limited Liability Corporation of the Commonwealth of Virginia, 3945 Fifty Second Street, N.W. Washington, D.C. 20016

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,
An Individual, 4201 Cathedral Avenue, N.W.
Apartment 416, Washington, D.C. 20016
and
8075 Lee Haven Road
Easton, Maryland 21601

Defendant.

FIRST AMENDED COMPLAINT [1]

Comes now the plaintiff, Irons LLC, by and through its counsel, Edward S. Irons, and for its complaint against defendant William Frederick Brandes states and avers.

I. VENUE AND JURISDICTION

1. The acts which resulted in the filing of this Complaint occurred in the District of Columbia.

2. Venue is proper in this judicial district under 28 U.S.C. § 1391(b)(2).

---

[1] This "First Amended Complaint" is filed "as a matter of course" because no pleading responsive to the original complaint has been served. Fed.R.Civ.P. 15(a).

3. This Court has jurisdiction of this case under 28 U.S.C. § 1332.

4. There is complete diversity of citizenship as between the plaintiff and the defendants.

5. The amount in controversy is in excess of $75,000, excluding interest and costs.

II. THE PARTIES

6. Plaintiff, Irons LLC, is a Limited Liability Corporation organized under the laws of the Commonwealth of Virginia having a registered agent at 707 Prince Street, Alexandria, Virginia 22314.

7. Defendant, William Frederick Brandes ("William"), is an individual who resides at 8075 Lee Haven Road, Easton, Maryland 21601 and at 4201 Cathedral Avenue, N.W., Apartment 416, Washington, D.C. 20016.

8. William is the husband of Carin Irons Brandes ("Carin").

9. Defendant William is in the process of divorcing his wife Carin. Related Non-Party Entity Grant represents defendant William in the divorce proceeding.

10. Carin is the daughter of Edward S. Irons ("Edward"), the Managing Member of plaintiff Irons LLC, and Mary. L. Irons ("Mary")

11. Lauren Elizabeth Brandes ("Lauren") is the daughter of William and Carin.

12. At all relevant times Carin owned, by inheritance from her Irons' grandparents, some 80 acres of land in Vermillion County, Illinois.

III. RELATED NON-PARTY ENTITY

13. Related Non-Party Entity, Robert E. Grant ("Grant"), Bar No. 458157, is an individual who is a member of the law

firm of Furey, Doolan, & Abell, 8401 Connecticut Avenue, Suite 1100, Chevy Chase, Maryland 20815-5803.

14. On October 10, 2006, Grant filed a "Notice of Entry of Appearance" in this case as counsel for defendant William.

15. Exhibit 1 to this Complaint is a copy of the "Articles of Incorporation of Irons LLC" filed December 3, 2002.

16. Exhibit 2 is a copy of the executed "Irons LLC Operating Agreement" "made this 16th day of December, 2002".

17. Exhibits 3 and 4 are "Assignment(s) of Company Interest" from plaintiff Irons LLC to Defendant William. Each of Exhibits 3 and 4, over the signature of defendant William, states on page 2: "I HEREBY ACCEPT the above Assignment of Company Interest and agree to abide by the terms of the Operating Agreement of Irons LLC".

18. Exhibit 5 is a copy of the executed "Power of Attorney" pursuant to which Irons LLC appears as the true and lawful attorney in the name, place and stead of Edward S. Irons and Mary L. Irons ("The Irons").

19. The Articles of Incorporation of plaintiff Irons LLC (Exhibit 1) were filed December 3, 2002.

20. Defendant William has agreed per Exhibits 3 and 4 to "abide by the terms of the Operating Agreement of Irons LLC" (Exhibit 2).

21. Under the Irons LLC Operating Agreement (Exhibit 2), effective December 16, 2002, Edward is designated as, and at all relevant times has been and is now, the Managing Member of Irons LLC.

22. Subsequent to December 16, 2002 and prior to December 31, 2002, Edward met with Carin, Mary and defendant William ("the December 2002 meeting").

IV. ALLOCATION AND ASSIGNMENT OF AN INTEREST IN IRONS LLC TO DEFENDANT

23. Defendant William agreed to and did become a member of plaintiff Irons LLC at the December 2002 meeting alleged in paragraph 22 hereof, and he then agreed to abide the terms of the Irons LLC Operating Agreement (Exhibit 2), which Operating Agreement was formalized on March 13, 2003 by the Assignments which are Exhibits 3 and 4 hereof.

A. Talbot County, Maryland Real Estate Parcels

24. Prior to 1996, defendant William and his wife, Carin, desired to obtain a first parcel of Talbot County, Maryland real estate; specifically the property located at 8075 Lee Haven Road, Easton, Maryland for a purchase price of $632,500, but lacked sufficient funds to do so.

25. Funding for the acquisition of said first parcel of Talbot County, Maryland real estate was arranged as follows:

(i) Pursuant to agreement with The Brandes, The Irons provided funds in excess of $400,000 or about 80% of the total initial purchase price of $632,500.

(ii) In cooperation and agreement with The Irons, Carin sold the property she then owned in Vermillion County, Illinois to provide in that way and otherwise about $200,000 for application to the purchase price.

26. In 1996 or 1997, the said first parcel was purchased by The Brandes who funded that purchase in the manner described in paragraph 25 hereof.

27. The original purposes and expectations of The Irons in providing funds to The Brandes as alleged in paragraph 25 hereof included, among other things:

(i) maintenance of the assets of The Irons and the assets of The Brandes (including the assets previously

acquired by The Brandes from, by or through The Irons) at all times under the control of The Irons,

(ii) provision of an initial investment in real estate located on the Eastern Shore of Maryland, said initial investment to be used as a part of a then-contemplated plan to engage in an Eastern Shore of Maryland real estate venture, and

(iii) provision of an Eastern Shore home not only for The Brandes but also to be shared with The Irons from time to time.

28. In accord with the original purposes and expectations of the parties, The Brandes purchased and acquired legal title to the said first parcel of Talbot County, Maryland real estate sometime in 1996 or 1997, and funded said purchase with the funds provided to them by The Irons and Carin as alleged in paragraph 25 hereof; provided, however, that said Brandes' legal title at all times has been and is now subject to an outstanding equity interest of The Irons in the said first real estate parcel in Talbot County, Maryland property, said Irons' equity interest having an initial value in excess of $400,000 and Carin's equity interest having an initial value in excess of $200,000.

29. The Irons LLC asset allocation to defendant William set forth in paragraph 23 hereof and the Exhibit 3 and 4 Assignments of an interest in plaintiff Irons LLC were then made by Edward as Managing Member of plaintiff Irons LLC

(i) as consideration for the agreement by defendant William at the December 2002 meeting to become a member of plaintiff Irons LLC, to abide the terms of the Operating Agreement, and thereby assume the obligations consequent from doing so as now set forth in the Operating Agreement (Exhibit 2 hereof) and the Articles of Incorporation (Exhibit 1 hereof) of Irons LLC;

(ii) should need therefor arise, to provide economic security for and to impart and maintain, as might be necessary, stability to the marriage of Carin and William and, thereby to provide a stable family and home life for Lauren;

(iii) to preserve and maintain within the Irons/Brandes families unimpaired control of all of the Irons LLC assets and, as such, subject to the control of Edward as Managing Member of Irons LLC; and

(iv) based on advice of counsel, to accommodate the tax laws, including estate tax laws, germane to substantial assets originally provided by Edward to fund Irons LLC.

COUNT I

THE EXHIBITS 3 AND 4 ASSIGNMENTS ARE VOID FOR FRAUDULENT PROCUREMENT

30. In support of this Count 1, plaintiff specifically alleges as follows:

(i) The Exhibit 3 and 4 Assignments were fraudulently procured and are void.

(ii) Beginning long before and continuing until and after the time of the December 2002 meeting alleged in paragraph 22 hereof and the execution on March 13, 2003 of the Assignments which are Exhibits 3 and 4 hereof, defendant William knew that his marriage to Carin was unstable.

(iii) The instability of the Irons-Brandes marriage was a known, material, existing fact that in equity or good conscience should have been disclosed to plaintiff Irons LLC at or before each of the December 2002 meeting and defendant William's execution of the Exhibits 3 and 4 Assignments on March 13, 2003.

(iv) Defendant William concealed said material fact from The Irons and plaintiff Irons LLC at and after the December 2002 meeting and prior to the execution on March 13, 2003 by Edward S. Irons, Managing Member of the Exhibits 3 and 4 Assignments.

(v) Defendant William intended that Irons LLC and Irons LLC did, in fact, act in ignorance of the said concealed material fact.

(vi) So misled, Irons LLC did, in fact, make the allocation and execute the Assignments to defendant William of an interest in Irons LLC as alleged, *inter alia*, in paragraph 23 hereof and as set forth in the Exhibit 3 and 4 Assignments.

(vii) Defendant William's concealment of the said material fact has damaged and is now damaging plaintiff Irons LLC.

31. Because defendant William knew at the time he participated in the December 2002 meeting alleged in paragraph 22 hereof and at the time he signed the Exhibit 3 and 4 Assignments of an interest in Irons LLC that his marriage to Carin was unstable and that such information would have been material to Managing Member Edward's decision to allocate by paragraph 23 hereof and then assign by Exhibits 3 and 4 the interest in Irons LLC to William as alleged, defendant William was then under a duty in equity and good conscience to disclose that information to Irons LLC's Managing Member Edward at that meeting.

32. Defendant William's failure to make such disclosure was fraudulent in that but for such failure to disclose, no allocation and no assignment of any Irons LLC interest whatever would have been made to defendant William.

33. Contrary to the original purposes and expectations of the parties as alleged in paragraphs 27-29 and 32 hereof, defendant William (in exploitation of his fraudulent procurement of an interest in plaintiff Irons LLC) during the last quarter of 2005, repeatedly rejected the written requests of Edward, as Managing Member of Irons LLC, and Carin, as a member of Irons LLC, forthwith to assign and transfer either to said Carin, or to Lauren, or both, the unencumbered entirety of his 21.6056% interest in Irons LLC which he fraudulently and dishonestly procured as alleged in paragraph 32 hereof.

COUNT 2—BREACH OF OPERATING AGREEMENT

34. Plaintiff incorporates herein, as if fully set forth, each and every allegation contained in all of the other preceding paragraphs of this Complaint.

35. The Articles of Incorporation of Irons LLC (Exhibit 1) states, in part:

> SEVENTH: The following provisions are hereby adopted for the purposes of defining, limiting, and regulating the powers of the Company and any of the members thereof:
>
> (a) The management of the Company is reserved to the members of the Company, and the authority of members to act for the Company solely by virtue of their being members, is limited. Members' authority is set forth in the Operating Agreement. [p. 2]

36. The Operating Agreement (Exhibit 2 hereof) states, in part:

> SECTION 15
> VOLUNTARY TRANSFER OF COMPANY INTEREST; OPTION ON DEATH OF A MEMBER
>
> A. Except as provided in paragraph 15.D. no member (hereinafter referred to as the "Selling Member") shall sell, hypothecate, pledge, assign, or otherwise transfer

with or without consideration (hereinafter collectively referred to as "Transfer") any part or all of their interest or rights in the Company (hereafter "Company Interest") without first notifying the Company and each of the remaining members of the Company in writing, sent certified mail, postage prepaid, return receipt requested, and complying with the other provisions of this Operating Agreement.

B. Each member hereby covenants and agrees that he or she will not sell, assign, transfer, mortgage, pledge, encumber, hypothecate or otherwise dispose of all or any part of his or her Company Interest to any person, firm, corporation, trust or other entity without offering a right of first refusal to the Company. The Company shall have the right to accept the written third party offer at any time during the thirty (30) days following the date of which the written third party offer is delivered to the Company. The consent of the managing member shall be required to authorize the exercise of such right of first refusal by the Company. If the Company shall fail to accept the offer within the thirty (30) day period or waives its right of first refusal in a writing signed by the managing member prior to the expiration of the thirty (30) day period, such Company Interest may during the immediately following sixty (60) days be disposed of free of the restrictions imposed by this Operating Agreement; provided, however, that the purchase price for such Company Interest shall not be less and the terms of purchase for such interest shall not be more favorable than the purchase price and terms of purchase contained in the third party offer. Any Company Interest not so disposed of within the sixty (60) day period shall thereafter remain subject to the terms of this Operating Agreement. Notwithstanding the preceding sentences, no assignee of a Company Interest shall become a member

of the Company except upon the consent of the managing member. [p. 12]

37. Defendant William has, in fact, and in collusion and conspiracy with Related Non-Party Entity Grant willfully and purposefully violated Sections 15A and 15B of the Operating Agreement by, among other things, "transfer[ring]" all or a "part" of the interest in plaintiff Irons LLC fraudulently assigned to him by Exhibits 3 and 4, by using such "part" directly or indirectly to finance litigation, including proceedings to divorce Carin, as payment of or commitment to pay attorney's fees and in other ways, by agreeing or committing to agree to include some or all of said part as consideration for a settlement of his divorce proceeding against Carin, and a part of or form of settlement of a compromise and settlement of the divorce in which he is involved with his wife Carin.

COUNT 3—BREACH OF DUTY OF GOOD FAITH AND FAIR DEALING

38. Plaintiff incorporates herein, as if fully set forth, each and every allegation contained in all of the other preceding paragraphs of this Complaint.

39. Under District of Columbia law, all contracts contain an implied duty of good faith and fair dealing which means that neither party will do anything that will have the effect of destroying or injurying the right of the other party.

40. A part of the agreement pursuant to which The Irons funded or arranged for the funding of the acquisition of the first parcel of Talbot County, Maryland real estate as alleged in paragraph 25 hereof was an understanding by defendant William to work in collaboration with The Irons to procure additional parcels of property on the Maryland Eastern Shore, including a contiguous second parcel of Talbot County, Maryland real estate.

41. Pursuant to that understanding, defendant William successfully negotiated for and on behalf of The Irons and Irons LLC acquired such a contiguous, second parcel of land in Talbot County, Maryland.

42. Said contiguous, second parcel was purchased by and is now owned by plaintiff Irons LLC.

43. The conduct of defendant William as alleged in this Count 3 has had and is now having the effect of destroying or injuring the rights of plaintiff Irons LLC and of The Irons to the agreements, purposes and expectations of The Irons as alleged herein and otherwise.

COUNT 4--PROFESSIONAL MISCONDUCT

44. Plaintiff incorporates herein, as if fully set forth, each and every allegation contained in all of the other preceding paragraphs of this Complaint.

45. Under Rule 84, "Misconduct", of the Model Rules of Professional Conduct:

> It is professional misconduct for a lawyer to:
>
> (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
>
> * * *
>
> (d) engage in conduct that is prejudicial to the administration of justice;

46. Defendant William jointly with his counsel, Related Non-Party Entity Grant, has engaged in conduct prejudicial to the administration of justice in violation of various Rules of Professional Conduct, including but not limited to Rules of Professional Conduct 1.7 and 8.4.

COUNT 5

CONFLICT OF INTEREST—DISQUALIFICATION OF GRANT AS COUNSEL FOR DEFENDANT BRANDES

47. Plaintiff incorporates herein, as if fully set forth, each and every allegation contained in all of the other preceding paragraphs of this Complaint.

48. Related Non-Party Entity Grant's conflicting dual role as counsel for defendant William not only in this case but also in the proceeding for divorce from his wife, Carin, involves an improper conflict of interest in violation of Rule of Professional Conduct 1.7.

49. As counsel for defendant William, Related Non-Party Entity Grant has a duty to his client defendant William and to the Court to respond timely and honestly to the Complaint in this action.

50. To do so as counsel for defendant William, Related Non-Party Entity Grant must file and sign a response to the Complaint that includes allegations inconsistent with the position defendant William must assert in the divorce proceeding.

51. Related Non-Party Entity Grant has evaded this conflict of interest by aiding and abetting the acts of defendant William in violation of Fed.R.Civ.P. 4(d).

52. Due to the conflict of interest as alleged in paragraph 51 hereof, this Court has the power and the responsibility to disqualify Related Non-Party Entity Grant to represent defendant William in this action.

53. If Related Non-Party Entity Grant does not voluntarily withdraw, a proper motion to disqualify will be filed.

PRAYER

Plaintiff Irons LLC requests entry of judgment including:

1. An order that requires immediate transfer by defendant to plaintiff Irons LLC, or to Carin Brandes, his wife, or to Lauren Brandes, his daughter, of the unencumbered entirety of the interest in Irons LLC initially allocated to defendant.

2. An order preliminarily and permanently enjoining defendant from transferring or encumbering in any way any part whatever of (i) the Irons LLC interest allocated to defendant or (ii) any other asset acquired in whole or in part by defendant from Edward Irons or Mary Irons.

3. An order forthwith enjoining defendant or any representative of defendant from any access whatever at any time or for any time whatever to the property located at 8075 Lee Haven Road, Easton, Maryland in which the plaintiff, Irons LLC by and through The Irons, who are LLC members, has an equity interest valued in excess of $400,000.

4. An order that defendant shall forthwith deliver to Edward, as Managing Member of plaintiff, all keys to the said Lee Haven Road property which are in his possession or control.

5. An order preliminarily and permanently enjoining defendant from ever asserting any claim of any kind whatever to the aforesaid Easton, Maryland property.

6. Compensatory damages in conformance with proof but in no event less than $250,000.

7. Punitive and exemplary damages in the maximum amount available.

8. Costs and attorney's fees.

9. Such other relief as the Court deems just and proper.

s/ _____

Edward S. Irons
D.C. Bar No. 149898
Edward S. Irons, P.C.
3945 - 52nd Street, N.W.
Washington, D.C. 20016
(202) 362-5332 - voice
(202) 966-1338 - fax
Tingent@aol.com - email
Attorney for Plaintiff

APPENDIX F

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-0904
November 8, 2006
4:00 p.m.

IRONS, L.L.C.,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

TRANSCRIPT OF SCHEDULING CONFERENCE
BEFORE THE HONORABLE JAMES ROBERTSON
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiff: EDWARD STERLING IRONS, Esquire
3945 52nd Street, NW
Washington, DC 20016
(202) 362-5332

For the Defendant: ROBERT E. GRANT, Esquire
FUREY, DOOLAN & ABELL, LLP
8401 Connecticut Avenue
Suite 1100
Chevy Chase, MD 20815
(301) 652-6880

Court Reporter: REBECCA STONESTREET, RPR, CRR
Official Court Reporter
Room 6415, U.S. Courthouse
Washington, D.C. 20001
(202) 354-3249

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

PROCEEDINGS

[2] COURTROOM DEPUTY: This is Civil Action Number 06-0904 Irons, L.L.C. versus William Frederick Brandes. Mr. Irons present for the plaintiff, Mr. Grant present for the defendant.

THE COURT: I called this status conference because this case is definitely getting off on the wrong foot.

Mr. Irons, you are representing yourself in this case, or Irons L.L.C. Is that correct?

MR. IRONS: Well, I'm representing the limited liability corporation, yes, sir, that is correct.

THE COURT: Well, maybe you can tell me why I have jurisdiction of this case, just for openers. Do you want to step up here to the podium?

MR. IRONS: This is a diversity case, and the amount in controversy is over $75,000.

THE COURT: Where does Irons, L.L.C. live?

MR. IRONS: I beg your pardon?

THE COURT: What is the state of incorporation, if it is a corporation, of Irons, L.L.C.?

MR. IRONS: In Virginia.

THE COURT: Virginia?

MR. IRONS: Yes, sir.

THE COURT: And it's a limited liability corporation?

MR. IRONS: Yes, sir.

THE COURT: Who are the members of it?

[3] MR. IRONS: Who are the members of the corporation?

THE COURT: Yeah.

MR. IRONS: They are myself, Mr. Brandes, who is the defendant, my wife, and I think my daughter.

THE COURT: And can you tell me, sir, whether the members of a limited liability—whether a limited liability corporation is domiciled for purposes of diversity in only the state where it's incorporated, or also the state where its partners and members live?

MR. IRONS: I do not know the answer to that question.

THE COURT: And where is Mr. Brandes domiciled?

MR. IRONS: To the best of my information, in Maryland.

THE COURT: Well, he has a District of Columbia and a Maryland address, does he not?

MR. IRONS: I beg your pardon?

THE COURT: I thought there was a District of Columbia and a Maryland address for him given here.

MR. IRONS: He had an address in an apartment in the District of Columbia. He may or may not be there. We were unsuccessful in trying to serve him there.

THE COURT: Well, your complaint, Mr. Irons, is styled Irons, L.L.C., a limited liability corporation of the Commonwealth of Virginia—

MR. IRONS: Yes, sir.

THE COURT: —with an address in Washington, D.C., and [4] the defendant is William Brandes, an individual with an address in Washington, D.C.

MR. IRONS: That is what it says, yes, sir.

THE COURT: Now, I don't know whether there's diversity jurisdiction here or not. Does the defendant have a view on that? I know your first view is you've never been served, but let's talk about diversity for a minute.

MR. GRANT: Yes, Your Honor. It's my belief that the parties—when my client and Karen Brandes were married, Your Honor, they lived in the District. When my client moved out of the marital home, he took an apartment also in the District. The address in Easton is a weekend house. I believe my client would probably say that he considers himself to be domiciled in the District.

THE COURT: All right. While you're up, tell me again the complicated story of service of process here. You or somebody was given authority to accept service, then you weren't given authority to accept service. What's the story?

MR. GRANT: Well, as the plaintiff's motion makes clear, they made their initial attempt at service before Mr. Irons and I had any conversation about it. That was the Boomers Process attempts. When Boomers was apparently unsuccessful in serving Mr. Brandes, Mr. Irons contacted me by letter and asked whether I would accept service. I conferred with Mr. Brandes, and given my own schedule in July, I asked—[5] Mr. Brandes said that it would be all right with him if I accepted service, and so I informed Mr. Irons that if he serves the complaint on me and would agree that I could have until the end of July to respond, that Mr. Brandes had authorized me to accept service.

I told him in the letter that the reason I needed until the end of July to respond was that I was going to be out of the country essentially the first two weeks of July, that I would be leaving on July 2nd.

Mr. Irons—incidentally, Your Honor, the accommodation that I requested was 54 days from the date of my letter, which would be less than the 60 days that Mr. Brandes would have been entitled to had Mr. Irons sent him a 4(D) notice at that time.

Mr. Irons wrote back and said that he could send the complaint, but that he wasn't doing it right away, that he would send it, I believe he said on the 23rd of June.

Instead I got another letter from him, I think it was on the 21st, although I don't have my time line right in front of me, in which he said he was not going to send the complaint on the 23rd, but that he was going to send it on July 3rd instead, a date when he knew that I was going to be out of the country.

So I conferred with Mr. Brandes again, and he said that under the circumstances, he didn't want me accepting service on [6] his behalf, he wanted to be afforded the full time to respond to which he would be entitled under the rules. And so I communicated that to Mr. Irons.

After that, Your Honor, I didn't hear anything further until I got the Rule 4 motion which Mr. Irons sent to me by e-mail. In that he described retaining another process service company to try and serve Mr. Brandes, apparently also unsuccessfully. Among other places, they apparently attempted to serve him at the marital home, which—

THE COURT: Is your client trying to avoid service?

MR. GRANT: Certainly not, Your Honor. He was served the first time this case was filed when it was pending before Judge Collyer. He authorized me to accept service with a very reasonable accommodation, and only when it became clear that Mr. Irons was engaged in what we felt was gamesmanship with our time to respond did he revoke that authorization.

If the Court looks at the addresses that are provided in the caption of the complaint and the materials submitted by, I believe it was Capitol Process Service was the second company, the Court will note that there are different apartment numbers used, and there's a different apartment number even

in the affidavit submitted by the Capitol Process employee. So I'm not sure that they ever had a correct address for Mr. Brandes.

In the previous case he was served at the Easton house, where he usually goes on the weekends. Had Mr. Irons contacted [7] me in July when I was back in the country, we could have discussed accepting service. But in the meantime, by the time he invoked the Rule 4(D) waiver procedure, first of all he had incurred already all the costs that he is now seeking to recoup, and our position is that one must first invoke the procedure before one can thereafter recoup costs of service. And furthermore, by the time he sent the 4(D) waiver request, the summons had already expired.

Then even after I wrote to him, he didn't wait the 30 days from—the rule requires that the defendant be given 30 days to respond to the waiver request. I wrote to him about two weeks after he sent the waiver request, said please don't contact my client directly, you know that I represent him; if you want to discuss my accepting service of process, please contact me. And instead, and before even the 30 days had run from service of the mailing of the waiver notice, he filed the rule 4(D) motion that is pending.

THE COURT: Mr. Irons, do you wand to respond to any of that?

MR. IRONS: Just briefly, Your Honor. As far as the timing of my conduct is concerned, I agree with Mr. Grant that he should have until July 31st to respond to the complaint. And all of the things that I did, including—were done within full time to accommodate the date that he requested and I agreed to. And I do not feel that I was late or lacking diligence in any [8] respect. I simply filed the papers within the time that Mr. Grant asked me to, and he has them.

The other thing that I want to say is that the Rule 4(D) motion I think is appropriate. There was a request for waiver

of service and notice of the filing of the suit that set a date certain for a response. The date certain was October 11th. There was no response. The law seems pretty clear that in those circumstances, the 4(D) motion must be granted.

I want to come down on what to me is a more fundamental point. I feel that the delays which have been occasioned in this case have resulted, and perhaps intentionally, to make it unnecessary for the defendant to respond to the complaint. In my proposed scheduling order, I have set November 24th for a date for the response to the amended complaint, and I strongly urge that that's an appropriate date.

THE COURT: All right. Look, both sides have gathered a lot of pawns around the wrong square on this chess board. This is a waste of lawyer time and energy and effort and motion practice. If you say, Mr. Grant, that your client is not avoiding service of process, then why can't you either accept service for him now or let Mr. Irons know where he is so he can be served and we can get on with this?

MR. GRANT: Your Honor, absolutely I'll accept service on behalf of him now. The reason that we went ahead and filed a [9] response to the 4(D) motion was hopefully to cut through some of this.

THE COURT: Let the record reflect that the defendant has accepted process through his counsel here in court as of today.

MR. IRONS: Thank you.

THE COURT: Okay. Now we've got that done.

Now, you have, what, 20 days to answer?

MR. GRANT: Yes, Your Honor. And I'll file a response. It may be a Rule 12 motion rather than an answer, but I'll respond within 20 days.

THE COURT: All right. Now, he wants a response by the 24th. Can you manage that?

MR. GRANT: I would prefer to have the 20 days, Your Honor, if the Court—

THE COURT: I know. But you've had a lot more than 20 already.

MR. GRANT: I'll file it by the 24th, then.

THE COURT: The 24th it is. Are you satisfied now?

MR. IRONS: Yes, Your Honor.

THE COURT: All right. Now, will somebody talk to me about the merits of this case?

MR. IRONS: Yes.

THE COURT: This looks to me like an ugly family squabble. I don't think it belongs in federal court in the [10] first place. There may be a motion to dismiss for want of jurisdiction. What is it you want out of this case, Mr. Irons, besides some form of revenge against your son-in-law?

MR. IRONS: What I want out of this case is set forth in my proposed settlement and scheduling order. It says what it says. It says that I think that the defendant should assign to his daughter or to his wife the interest which he owns, if any, in the plaintiff, Irons, L.L.C. Essentially that is all I want.

THE COURT: Well, maybe he should. But what legal right does Irons, L.L.C. assert to compel that result?

MR. IRONS: That is what the substance of the complaint is, yes.

THE COURT: I know. But teach me about it.

MR. IRONS: Sorry?

THE COURT: Teach me. Why are you going to win in this case?

MR. IRONS: Why are we going to win?

THE COURT: Yeah.

MR. IRONS: We're going to win because the assignments of interest in the L.L.C. to the defendant, Mr. Brandes, were improperly and fraudulently procured.

THE COURT: Well, let me go back to your complaint. So it's basically a fraud case? A fraud case?

MR. IRONS: Yes, it is.

THE COURT: Give me a minute. Did your daughter sign [11] any of these documents?

MR. IRONS: Sorry?

THE COURT: Did your daughter sign any of these documents?

MR. IRONS: I am going to answer the question yes, but I want leave to confirm the accuracy. I think the answer is yes. May I comment?

THE COURT: Sure.

MR. IRONS: You asked me before what I wanted out of this case, and I gave you an answer which was incomplete. And I want to complete the answer.

The agreement—the assignments that Mr. Brandes signed, and frankly, I signed, too, say that Mr. Brandes will comply with the provisions of the operating agreement of the L.L.C., and there is a damage claim in this case that he has not done so.

THE COURT: Mr. Grant?

MR. GRANT: Yes, Your Honor.

THE COURT: Are you able to tell me anything at all about your view of the merits of this case?

MR. GRANT: I'll do my best, Your Honor. I should call the Court's attention to a first amended complaint that was filed on Friday. That complaint alleges, among other things, that I am representing Mr. Brandes in his divorce case, which is not true. He's represented by another member of my firm.

[12] It also, in effect, names me as an unindicted co-conspirator, alleging that I conspired and colluded with Mr. Brandes to breach the agreement, among other things, by allocating or encumbering his interest in the L.L.C. to fund litigation, including this litigation and his divorce proceeding. I can assure the Court that none of that is true, and I will be—as part of the response to that complaint, I'll be moving to strike those allegations.

The essence of the complaint, as I understand it, is that Mr. Brandes knew when the family created this L.L.C. and transferred property interests to it, that Mr. Brandes knew that his marriage was unstable, and he fraudulently concealed that fact from Mr. Irons, and that Mr. Irons relied on, I guess, an implied representation that the marriage was stable in allocating property interests to the L.L.C. and in allocating L.L.C. interests to, among other people, Mr. Brandes, the defendant.

Our position is that none of that is true, but even if it were true, that the plaintiff, which as Mr. Irons points out is the L.L.C. and not he himself, that the plaintiff hasn't stated any claim against Mr. Brandes, because the plaintiff didn't—Mr. Brandes is not alleged to have made any representations to the plaintiff. He's alleged to have made representations to Mr. Irons, and Mr. Irons is alleged to have acted in reliance on those representations.

[13] My client disputes that he made any representations, implicit or otherwise, about the state of his marriage. He disputes that he knew that long ago that it was unstable, and he denies the legal existence of a duty to disclose to his in-laws or to an L.L.C. anything regarding the strength or lack of strength of his marriage.

So our feeling is that the complaint fails to state a claim upon which relief can be granted for a whole host of reasons, similar to what we alleged in our—or argued in our motion to dismiss in the previous action, and we will be modifying that to adapt it to the additional allegations in this complaint, which frankly really don't change the nature of the claim, I don't believe.

THE COURT: Well, this case doesn't sound like a federal lawsuit to me. I mean, frankly, it's a nice juicy human interest ugly story, and it might make life a lot more interesting for us around here than the ordinary run of federal lawsuits do, but it doesn't belong here. It doesn't belong in any court, as far as I can tell. It sounds to me like this is an angry father getting some revenge for his daughter's divorce.

Now, Mr. Irons, we can go down this road, but it's going to be public, it's going to be messy, it's going to be expensive, and it's going to take a long time. Is that what you want?

MR. IRONS: I'm going to answer your questions straight [14] up. Is that what I want? No, that's not what I want. What I want is to settle this case on the terms that I set forth in my proposed settlement agreement. I want in this courtroom today, which is the 8th day, I think, of November, to categorically deny with great respect that this is some kind of an action by me to get even, if I confused that word, because my daughter is getting a divorce. It has nothing whatever to do with it.

I feel that the defendant in this case has procured property wrongfully which he does not have, I think the divorce has been injected in this case in the response to the Rule 4(D) motion primarily to avoid any necessity to answer the allegations of the complaint, because those allegations would be inconsistent with the position that they want to assert on the divorce.

But I want to go back to something. I don't want this case in the slightest to go off on some erroneous premise that I, as a father, am trying to do something to counteract or offset the fact that Mr. Brandes has apparently decided to divorce my daughter. That has nothing to do with it. I am here on behalf of the limited liability corporation, representing all of its mem-bers, not myself, and I cannot in good conscience stand by and let Mr. Brandes claim an interest in that corporation which I am satisfied that he procured wrongfully.

THE COURT: But you want him to assign it to your daughter?

MR. IRONS: What?

THE COURT: But you want him to assign it to your daughter?

MR. IRONS: When I set up this limited liability corporation, I had a certain amount of funds. I distributed those funds through the members of the limited liability corporation, including my daughter, and I very much would like to have this matter of who owns the limited liability corporation settled consistent with what I tried to do at the time. I gave a certain percentage to my daughter, yes, and these papers also show that a certain percentage was assigned to Mr. Brandes, all under conditions such that it was believed that this Brandes family, Mr. Brandes' family, would live together with my daughter and have a stable and comfortable and happy home for my granddaughter Lauren.

All of a sudden, the whole pattern which I build my estate plan around and in the hope of having a stable family life, not merely for my daughter but for my Lauren—but for my granddaughter, Lauren, has been just destroyed by the claim by Mr. Brandes that he owns a portion of the limited liability corporation.

I would like very much—you asked me specifically what I want. I want to redo the assignment that Mr. Brandes has so

that my daughter and my granddaughter get the proportion of the limited liability corporation that I intend that they should [16] have, and that is why I ask Mr. Brandes to give his share back to my daughter or his wife.

THE COURT: What share does Mr. Brandes hold?

MR. IRONS: Percentage wise, about 21 or 22.

THE COURT: And what is the business, if any, of Irons, L.L.C.?

MR. IRONS: Irons, L.L.C. is a limited liability corporation that is in the investment business, trying right now to invest in real estate.

THE COURT: And what, roughly, is the net capital of Irons, L.L.C.? In other words, what is 21 percent worth?

MR. IRONS: I want to answer your question, and I will categorically, but I want to say that I don't think that the direction of Your Honor's question is correct. Mr. Brandes can't do anything at all with the portions of the limited liability corporation that he allegedly owns unless he gives a right of first refusal to the limited liability corporation and to the other members, meaning members other than himself. He can't sell it to anybody without giving the L.L.C. and its members a right of first refusal. It's not a salable product. It's not really, quote, "worth," closed quote, anything to him in its present form because it is subject to that right of first refusal, and it would have to be evaluated by people who evaluate such things and a number determined.

And what I am trying to say to the Court is that that [17] interest is worthless to Mr. Brandes at this point until he complies with the operating agreement, as he said he would do when the assignments were made; to wit, make an offer to the other members of the corporation before he tries to sell any of it.

THE COURT: If Irons, L.L.C. makes any cash distributions to other shareholders, can it do so without distributing any money to Mr. Brandes?

MR. IRONS: No.

THE COURT: So he can't do anything with it, but as long as he's got it, nobody else can, either?

MR. IRONS: That's one of the problems we're here about.

THE COURT: Okay. And how do you get the $75,000 worth of damages?

MR. IRONS: Basically because of the expenses and attorneys' fees that have been incurred by the L.L.C. because of this lawsuit, which would not have occurred but for Mr. Brandes' conduct.

THE COURT: Well, is 21 percent of the L.L.C. worth $75,000?

MR. IRONS: I'm sorry?

THE COURT: Is 21 percent of the L.L.C. worth $75,000?

MR. IRONS: Well, on paper, yes.

THE COURT: And you and your wife—I gather Mary [18] Irons is your wife?

MR. IRONS: Yes.

THE COURT: The two of you provided about 80 percent of the purchase price of property in Easton, Maryland?

MR. IRONS: Yes.

THE COURT: The purchase price or the down payment? The whole thing? In other words, did you finance the purchase of this house?

MR. IRONS: Not entirely. As the complaint also says, my daughter, Lauren, who is my—I'm sorry, my granddaughter,

Karen, also owns some property which she sold and contributed some $200,000 to the purchase price.

THE COURT: Uh-huh. But the land in Easton is titled to Mr. Brandes and his soon-to-be-divorced wife, your daughter?

MR. IRONS: That is true.

THE COURT: Aren't they going to work this dispute out as a matter of the divorce settlement, Mr. Irons? I mean, why does Irons, L.L.C. have to get involved in that if the money came from you and your wife? The money came from you and your wife, not from Irons, L.L.C. Right?

MR. IRONS: Well, my wife and I could compromise the L.L.C., yes. But the point is, I am moving for the other members of the L.L.C., including myself, my wife, and my granddaughter, not to stand by and permit Mr. Brandes to take some percentage of the L.L.C. which I feel that he obtained [19] wrongfully, and I want to litigate the issue of whether he procured it wrongfully.

THE COURT: Can you respond to Mr. Grant's point that you may have the wrong plaintiff here? I mean, this is really Edward Irons versus William Brandes, isn't it? Can General Motors object to the way somebody bought its stock?

MR. IRONS: Well, I will answer that. It came up before. There is a power of attorney to the L.L.C., and I think that the matter is proper as far as the identity of the parties, the party is concerned. If not, we'll amend the complaint to make it proper. But I have tried hard to make it proper and obtain the power of attorney from Ms. Irons and myself in favor of the L.L.C. to function in our right and stead.

THE COURT: All right. I have a suggestion for you, Mr. Irons. And you're free to accept it or reject it, but I hope you'll think about it before you do either one.

MR. IRONS: I couldn't hear what you said. I'm sorry.

THE COURT: I said I have a suggestion for you, and you're free to accept it or reject it, but I want you to think about it.

MR. IRONS: Oh, good.

THE COURT: And the suggestion is—and it's only a suggestion because this is a voluntary procedure. The suggestion is that you agree to let me send this matter off to the mediation program of this court. Now, I don't know whether [20] Mr. Brandes will agree to that, but I'll bet he does, because the mediation program of this court, if it works, is, A, cheaper; B, faster; and C, more confidential than slugging this out in a public court is going to be.

Now, if you-all want to spread all this family dirty linen out in the public pages of the federal reports, that's what I'm here for, but it seems to me like an enormous waste of effort and lawyer time and emotion.

MR. IRONS: Well, I want to think about this, as I think Your Honor said. I want to read today's record. What I really think is the easy way out of this is for Mr. Brandes to make an offer of settlement to me, if not the one I suggested, his own, so that we can negotiate this out and avoid the litigation. I certainly want to avoid the litigation.

I will not at this point at this hearing on the 8th day of November make a commitment to refer this to mediation. I want to read the record and make my mind up about that.

THE COURT: Well, you're going to start learning what litigation costs when you buy this record. But it's for sale. That's what the court reporter is in business for.

And Mr. Brandes, I don't know if he's going to make an offer of settlement to you. From what I hear, Mr. Grant is saying the first thing he's going to do is file a motion to dismiss.

MR. IRONS: If he files it, I'll meet it. We'll see [21] what happens.

THE COURT: I know. I know. But that's going to take another month or two, and papers and money and expense. If that's your wife sitting there at counsel table with you, she's a very sensible looking woman. I suggest you talk to her about whether it wouldn't make more sense to go off to mediation.

And you let me know informally, just call my chambers and say, okay, I'll do mediation. You do the same thing. All right?

MR. GRANT: Your Honor, may I be heard on that briefly?

THE COURT: Yes, sir.

MR. GRANT: My client, through his divorce counsel, and Karen Brandes, through her divorce counsel, are in the process of trying to resolve all these issues as a matter of the divorce case. That negotiation, as I understand it—I haven't been participating, but I've certainly been kept up to date. That negotiation has been everything that this proceeding has not been.

And my only request would be that if the Court refers this matter to mediation, that it not be referred until after the divorce negotiations are complete, because I believe that those negotiations will really resolve all the issues before the Court. And if there are any issues outstanding at that point, they really will be between Mr. Irons and his daughter, not between him and my client.

[22] THE COURT: Well, that's a fair point. What about that, Mr. Irons? He says basically you're jumping into the middle of ongoing negotiation in a divorce, and bug out until they're finished.

MR. IRONS: Well, the problem, which I think is implicitly admitted on this record, is that the property issue that's at issue in this case is also at issue in the divorce proceedings.

And I feel that Mr. Grant is in an awkward position—and I'm not saying that in any accusatory way—for his client, Mr. Brandes. In the divorce case, he must take a first position for his client, and to answer the complaint in this action fairly and honestly, he maybe required to take another position. And I think that he is in that awkward position, and I have made that point as a part of the first amended complaint.

I want to come back to your question again, which is what do I want. Overall what I want is to settle this case. I want to settle this case in response to an offer made by Mr. Brandes to settle. I suggested the terms upon which I would settle and my offer of settlement. It's there.

THE COURT: All right. Well, I've pushed this about as far as I can. Mr. Grant has accepted service of process on behalf of his client; his answer or motion or other response to the first amended complaint is due the 24th of November. It is my hope that the parties will agree between now and then that it [23] makes sense for this matter to go off to mediation, and that the mediation follow the completion of the divorce negotiations.

If you can't agree to that, then you won't agree to it, and the next thing I'll see is an answer or motion from the defendant and we'll just proceed along the normal track of litigation.

MR. IRONS: Very well.

THE COURT: I repeat to both of you, this case I don't think belongs in federal court, but we'll see the motion if we have to see the motion.

Anything further today?

MR. IRONS: Not from the plaintiff.

MR. GRANT: No, Your Honor. Thank you.

THE COURT: All right.

(Proceedings adjourned at 4:42 p.m.)

APPENDIX G

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-cv-904 JR

IRONS, LLC,

Plaintiff,

v.

WILLIAM BRANDES,

Defendant.

DEFENDANT'S MOTION TO DISMISS AND FOR COSTS PURSUANT TO RULE 41(d)

Defendant William Frederick Brandes by and through his undersigned attorneys, and pursuant to Rule 12(b)(6), moves to dismiss plaintiff's First Amended Complaint on the ground that it fails to state a claim upon which relief can be granted.

WHEREFORE for the foregoing reasons, and as more fully set forth in defendant's statement of points and authorities in support of this motion, adopted herein by reference, Defendant William Frederick Brandes respectfully prays that the Court dismiss plaintiff's Complaint with prejudice, award him his attorney's fees and costs pursuant to Rule 41(d), and for such other and further relief as the Court deems just and proper.

Respectfully submitted,

FUREY, DOOLAN & ABELL, LLP

By: /s/ Robert E. Grant
ROBERT E. GRANT, Bar No. 458157
8401 Connecticut Avenue
Suite 1100
Chevy Chase, Maryland 20815-5803
Tel. 301.652.6880
Fax 301.652.8972
E-mail rgrant@fdalaw.com

Attorneys for Defendant

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 06-cv-904 JR

IRONS, LLC,

Plaintiff,

v.

WILLIAM BRANDES,

Defendant.

DEFENDANT'S STATEMENT OF POINTS AND AUTHORITIES IN SUPPORT OF HIS MOTION TO DISMISS AND FOR COSTS PURSUANT TO RULE 41(d)

I. INTRODUCTION

Defendant is married to Carin Irons Brandes ("Carin"). First Amended Complaint, ¶ 8 ("Compl., ___"). Carin is the daughter of Edward S. Irons, the Managing Member of plaintiff. Comp., ¶ 10. Defendant and Carin are in the process of divorcing. Compl., ¶ 9. The First Amended Complaint represents the third attempt by Mr. Irons, using the plaintiff limited liability company as a stalking horse, to interject himself into the divorce.

Mr. Irons first filed an action in this Court on February 21, 2006.[1] That action was also styled *Irons, LLC v. William*

[1] In reviewing a motion to dismiss, the Court may consider the facts alleged in the complaint, documents attached as exhibits, and matters about which the Court may take judicial notice. *EEOC v. St. Francis Xavier Parochial Sch.*, 326 U.S. App. D.C. 67, 117 F. 3d 621, 624-25 (D.C. Cir. 1997). The Court may take judicial notice of matters such as court records without treating the motion as seeking summary judgment. *United States ex rel. New v. Rumsfeld*, 350 F.Supp. 2d 80, 88 (D.D.C. 2004) (citations omitted).

Frederick Brandes and was assigned to the Honorable Rosemary M. Collyer, under Civil Action Number 06-cv-297. After defendant moved, on March 21, 2006, to dismiss that action, plaintiff voluntarily dismissed it pursuant to Rule 41(a)(1) on March 28, 2006. After a brief respite, the instant action was filed on or about May 12, 2006, and plaintiff filed its First Amended Complaint on November 3, 2006. Like its predecessors, the First Amended Complaint fails to state a claim upon which relief can be granted.

II. STANDARD OF REVIEW

Motions to dismiss are disfavored and will not be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Tibbs v. Williams*, 263 F.Supp. 2d 39, 41 (D.D.C. 2003) (citations and internal quotation marks omitted). At this stage of the proceedings, the Court accepts as true all of the complaint's factual allegations, and the plaintiff is entitled to all reasonable inferences which may be drawn from those facts. *Id.* Still, where there are no allegations in the complaint which, if proven, would provide a basis for recovery, the movant is entitled to judgment as a matter of law. *Id.*

III. ARGUMENT

Plaintiff divides its First Amended Complaint into five counts, but prays for relief in one, undifferentiated, "WHEREFORE" clause at the conclusion of the pleading. While the facts are different and the theories have been adjusted, the prayer for relief is virtually identical in all three versions of the complaint that plaintiff has filed. Plaintiff demands (1) a mandatory injunction compelling defendant to transfer his interest in Irons, LLC to it, or to Carin, or to defendant's daughter, Lauren Brandes ("Lauren"); (2) an injunction prohibiting defendant from transferring or encumbering his interest in Irons, LLC or "any other asset acquired in whole or in part by defendant from Edward Irons or Mary

Irons"; (3) an injunction barring defendant from access to property at 8075 Lee Haven Road in Easton, Maryland ("Easton Property") (premises to which, plaintiff admits in paragraph 28 of the Complaint, defendant has legal title); (4) an injunction prohibiting defendant "from ever asserting any claim whatever" to the Easton Property and requiring him to deliver keys to the Easton Property to Mr. Irons; (5) compensatory damages in the amount of $250,000; (6) punitive damages in an unspecified amount; (7) costs and attorney's fees; and (8) other unspecified relief.

Plaintiff's failure to link the aforementioned claims for relief to any of the facts variously alleged in the five counts makes it difficult to discern on what basis plaintiff contends it is entitled to any of the relief sought. An examination of the facts alleged makes clear, however, that they do not entitle plaintiff to any of the relief it seeks. In this case, as in *Tibbs, supra*, "[b]efore the true contours of the lawsuit can be examined, it is necessary to clear out some of the underbrush." 263 F.Supp. 2d at 41.

A. Count 1

Plaintiff asserts in Count 1 that the assignments to defendant of an interest in the LLC were fraudulently procured, because defendant allegedly knew, at the time, that his marriage was unstable, but did not disclose that fact. When defendant moved to dismiss plaintiff's initial complaint (in Civil Action No. 06-cv-297), he argued that "[e]ven assuming (though plaintiff does not allege it) that defendant knew that his marriage's purported instability in 2002 would have been material to Edward Irons in making the allocations described in the Complaint, that knowledge furnishes no basis for awarding relief to Irons, LLC." Def's Stmt. of Pts. & Auth. in Support of Mot. to Dismiss, p.3 (Civil Action No. 06-cv-297, docket no. 3). While plaintiff at least now makes the allegation (Compl., 30), the First Amended Complaint still fails to state a claim by the LLC.

Plaintiff asserts that defendant knew his marriage was unstable long before he received any interest in the LLC. Compl., ¶ 30. Plaintiff further asserts that this alleged instability was a material fact that should have been disclosed to Irons, LLC and that defendant in essence defrauded the LLC by inducing it to assign an interest to him without disclosing his marriage's purported instability. *Id.* Plaintiff alleges that it "did, in fact, make the allocation and execute the Assignments to defendant William . . . as set forth in the Exhibit 3 and 4 Assignments." Compl., ¶ 30(vi). The trouble for plaintiff is that Exhibits 3 and 4 make it clear beyond doubt that Irons, LLC did *not* assign any interest in itself to defendant. To the contrary, "Edward S. Irons, Trustee of the Edward S. Irons Amended and Restated Revocable Trust Agreement, dated December 16, 2002" and "Mary Lee Irons, Trustee of the Mary Lee Irons Amended and Restated Revocable Trust Agreement, dated December 16, 2002" made the assignment. Compl., Ex. 3, 4. Plaintiff's own exhibits therefore demonstrate that it—the LLC—did not assign any interest on any basis, fraudulent or otherwise. The LLC has no standing to advance claims that belong to Mr. and Mrs. Irons. If the assignors of defendant's interest in the LLC were defrauded, it is they who must bring the claim.

B. Count 2

In Count 2, plaintiff claims that defendant has "willfully and purposefully violated Sections 15A and 15B of the [LLC's] Operating Agreement" by alienating his interest in the LLC in two ways: to finance litigation (supposedly "in collusion and conspiracy with" undersigned counsel) and by offering to assign all or part of his interest to Carin as part of the divorce settlement. Compl., ¶ 37. Given that plaintiff demands the entry of an "order that requires immediate transfer by defendant . . . to Carin Brandes, his wife, . . . the unencumbered entirety of [his] interest in Irons LLC" (Compl., pp. 16-17), it is difficult to see how defendant's

allegedly offering to transfer all or part of his interest in her could support any claim against him. The remedy for a breach of contract cannot be the very act that constitutes the breach. Furthermore, to the extent that Count 2 is the basis for the injunctive relief plaintiff requests, it lacks any allegation that the harm plaintiff has allegedly suffered or might suffer is irreparable, and cannot be remedied by an award of damages.

C. Count 3

Plaintiff alleges that Edward and Mary Irons, his wife, provided defendant and Carin with "funds in excess of $400,000" to purchase a second home in Easton. Compl., ¶ 25. Plaintiff goes on to describe the Irons' reasons for doing so and asserts that legal title to the property is "subject to an outstanding equity" interest of the Irons. Compl., ¶¶ 27-28. Accepting all that as true, as defendant must for purposes of this motion, there is nothing pled that would permit the Court to afford relief to Irons, LLC. Mr. Irons may well be the Managing Member of the LLC, but that does not give it standing to assert claims which, if they exist at all, belong to Mr. and Mrs. Irons. In fact, defendant and Carin purchased the Easton Property "sometime in 1996 or 1997" (Compl., ¶ 28), but Irons, LLC was not even organized until December of 2002 (Compl., ¶ 19). Defendant's supposed failure to disclose something in 1996 or 1997 cannot have harmed an entity that did not even come into existence until five years later. The fact that Mr. and Mrs. Irons executed a power of attorney in favor of the LLC does not change the analysis. The power of attorney purports to authorize the LLC to "conduct all business matters which now exist or may arise regarding [the Irons'] interest in the aforesaid Easton, Maryland property." Compl., Ex. 5. If a claim exists, however, it still belongs to Mr. and Mrs. Irons, not to Irons, LLC.

In Count 3, plaintiff adopts its earlier, general allegations and further asserts that defendant breached some duty of good faith and fair dealing. Specifically, plaintiff alleges that Mr.

and Mrs. Irons understood, when they gave defendant and Carin money for the purchase of the Easton Property, that defendant would work with them "to procure additional parcels of property on the Maryland Eastern Shore," and that defendant, in fact, did so. Compl. ¶¶ 40-42. Then, in an allegation that does not quite follow, plaintiff alleges that "[t]he conduct of defendant William as alleged in this Count 3 has had and is now having the effect of destroying or injuring the rights of plaintiff Irons LLC and of The Irons to the agreements, purposes and expectations of The Irons as alleged herein and otherwise." Compl., ¶ 43.

As noted above, Irons, LLC has no standing to assert claims that attempt to vindicate "the agreements, purposes and expectations of The Irons," and has alleged nothing that would allow the Court to infer that defendant owed it-the LLC-any duty at all in connection with the purchase of the Easton Property. Plaintiff has alleged no facts that would permit the trier of fact to conclude that it has any interest in the Easton Property whatsoever, or in the agreements, purposes or expectations of defendant and his in-laws prior to its purchase. Furthermore, Count 3 is fatally vague.

Even if Mr. and Mrs. Irons were named plaintiffs, the allegation that defendant's conduct in furthering their purported expectations has somehow harmed them is wholly conclusory (not to mention illogical). Even under the minimal requirements of notice pleading, Rule 8 requires that the complaint give the defendant fair notice of each claim and its basis. *Gore v. First Union Nat'l Bank*, 2002 U.S. Dist. LEXIS 14396 * 11 (D.D.C. July 28, 2002). A vague and conclusory allegation that the defendant has engaged in unspecified "conduct" is not sufficient. *Id., citing Muniz v. Chase Manhattan Mortg. Corp.*, 1998 U.S. Dist. LEXIS 1768 (S.D.N.Y. Feb. 18, 1998) (allegations that defendants "through a pattern of deceptive business practice [were] attempting to skim plaintiffs' equity in their homestead estate" were vague and

conclusory, and failed to provide specific facts regarding defendants' alleged wrongdoing). Even if defendant owed duties of good faith and fair dealing to plaintiff and Mr. and Mrs. Irons, the failure to identify how defendant allegedly breached those duties requires dismissal. Finally, to the extent that Count 3 is the basis for any injunctive relief sought, plaintiff has, again, failed to plead facts that would permit the Court to conclude that any harm suffered would be irreparable.

D. Counts 4 and 5

Counts 4 (Professional Misconduct) and 5 (Disqualification of Grant as Counsel for Defendant Brandes) can be dealt with summarily. Neither states any claim for relief against defendant. Instead, plaintiff alleges that undersigned counsel "has engaged in conduct prejudicial to the administration of justice" by colluding and conspiring with defendant to alienate all or some part of defendant's interest in the plaintiff LLC (Compl., ¶¶ 46, 37), and that undersigned counsel has a "conflicting dual role as counsel for defendant William not only in this case but also in the proceeding for divorce from his wife, Carin" that creates "an improper conflict of interest in violation of Rule of Professional Conduct 1.7" (Compl. ¶ 48). Even if those allegations were true, which they most assuredly are not,[2] neither supports any sort of claim against the defendant. Counts 4 and 5, and any allegations relating to

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[2] While defendant recognizes that, for purposes of this motion, plaintiff's allegations must be accepted as true, it must be noted that plaintiff is not even consistent in what it claims. On November 1, plaintiff filed a paper captioned "Supplement to Reply in Support of Plaintiff's Motion Under Fed.R.Civ.P. 4(d)" in which plaintiff's counsel dedicated three pages to pointing out that "there is no such divorce proceeding pending," and accusing undersigned counsel of violating Rule 11 for filing a paper suggesting there is. Supp. Repl., p.2 (emphasis in original). It is curious, then, that two days later Mr. Irons filed a pleading contending that defendant breached the LLC operating agreement by using his interest in the LLC "to finance litigation, including proceedings to divorce Carin."

undersigned counsel, should be stricken as immaterial, impertinent and scandalous, pursuant to Rule 12(f).[3]

E. Request for Award of Costs, Including Attorney's Fees

Rule 41(d) permits the Court, where an action has previously been voluntarily dismissed, to require the plaintiff to pay defendant his costs associated with that action. The rule exists for precisely this situation: plaintiff voluntarily dismissed Civil Action No. 06-cv-297 to avoid an adjudication on the merits of defendant's motion to dismiss, and has now filed essentially the same claim. "Most courts that have considered the question determine that attorney's fees can be part of the contingency costs that must be paid if a new action is filed, particularly if those courts permit payment of attorney's fees to be a condition of dismissal without prejudice under Rule 41(a)." *Kyte v. College of Southern Maryland*, 2005 U.S. Dist. LEXIS 2516 at *4 (D.Md. 2005), *citing* Edward X. Clinton, Jr., *Does Rule 41(d) Authorize an Award of Attorney's Fees?*, 71 St. John's L. Rev. 81 (Winter, 1997). Attorney's fees are commonly awarded by this Court as a condition for voluntary dismissal, to protect defendants from the prejudice or inconvenience that may result from a voluntary dismissal. *Independence Federal Savings Bank v. Bender*, 230 F.R.D. 11, 13-14 (D.D.C. 2005). Even where a plaintiff acts in good faith, attorney's fees should be awarded to the defendant. *Taragan v. Eli Lilly & Co., Inc.*, 261 U.S. App. D.C. 387, 838 F.2d 1337, 1340 (D.C. Cir. 1988), *citing GAF Corp. v. Transamerica Ins. Co.*, 214 U.S. App. D.C. 208, 665 F.2d 364 (D.C. Cir. 1981). The interests protected by Rule 41(d) are even more compelling where, as here, plaintiff has not acted in good faith, but has

---

[3] "Scandalous" for purposes of Rule 12(f) means improperly casting a derogatory light on someone, with respect to moral character. *Black's Law Dictionary*, 6th Ed., p.1344. Undersigned counsel respectfully submits that plaintiff's allegations regarding his conduct more than qualify.

ginned up claims more properly adjudicated in a divorce, and repeatedly asserted claims on behalf of parties other than the real parties in interest. Defendant respectfully submits that the Court should award him his costs, including attorney's fees, of defending Civil Action No. 06-cv-297 and requests the opportunity, if the Court is inclined to grant such relief, to submit a bill of costs.

CONCLUSION

Edward Irons has twice used Irons, LLC, and this Court, as a cudgel to try to influence negotiations between his daughter and the defendant. Irons, LLC has no claim against William Frederick Brandes for anything to do with the way defendant acquired his interest in the Easton Property or in the LLC, or any of his actions since. The First Amended Complaint, like its predecessors, simply fails to state any claim upon which relief can be granted, and should be dismissed. Defendant respectfully submits that since this is plaintiff's second attempt to litigate these matters, Civil Action No. 06-cv-297 having been voluntarily dismissed solely to avoid an involuntary dismissal, that the Court should dismiss this action with prejudice, and award defendant his costs and attorney's fees incurred in obtaining dismissal of the first action.

Respectfully submitted,

FUREY, DOOLAN & ABELL, LLP
By: /s/ Robert E. Grant
ROBERT E. GRANT, Bar No. 458157
8401 Connecticut Avenue
Suite 1100
Chevy Chase, Maryland 20815-5803
Tel. 301.652.6880
Fax 301.652.8972
E-mail rgrant@fdalaw.com

Attorneys for Defendant

APPENDIX H

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1:06CV00904JR

IRONS, LLC,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

PLAINTIFF'S MOTION TO DISQUALIFY

Plaintiff, Irons LLC, a Virginia Limited Liability Corporation, moves for the entry of an order pursuant to Rule of Professional Conduct ("RPC") 1.7 that disqualifies related nonparty entity Robert E. Grant and his firm, Furey, Doolan & Abell, as counsel for defendant Brandes in this case.

This Motion to Disqualify is based on the "[Proposed] Findings of Fact" (Attachment A). The Court's attention is particularly invited to the statement of Mr. Grant, defendant's counsel, at the November 8, 2006 Scheduling Conference which is quoted at footnote 1 to proposed finding 3:

> MR. GRANT: I'll do my best, Your Honor. I should call the Court's attention to a first amended complaint that was filed on Friday. That complaint alleges, among other things, that I am representing Mr. Brandes in his divorce case, which is not true. He's represented by another member of my firm. [Tr. 11, ll. 21-25]

Consequently, this Motion requests an order under RPC 1.7 that absolutely precludes not only Mr. Grant but also his "firm" and each lawyer which is associated with his "firm"

from, directly or indirectly, representing defendant Brandes as counsel in this case.

LEGAL STANDARD

The Annotated Model RPC 1.7(a) entitled "Conflict of Interest: Current Clients" states:

> (a) Except as provided in paragraph (b),[1] a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. . . .

FIRST AMENDED COMPLAINT, COUNT 5

First Amended Complaint Count 5 states:

COUNT 5

CONFLICT OF INTEREST - DISQUALIFICATION OF GRANT AS COUNSEL FOR DEFENDANT BRANDES

47. Plaintiff incorporates herein, as if fully set forth, each and every allegation contained in all of the other preceding paragraphs of this Complaint.

48. Related Non-Party Entity Grant's [*and his firm's*] conflicting dual role as counsel for defendant William not only in this case but also in the proceeding for divorce from his wife, Carin, involves an improper conflict of interest in violation of Rule of Professional Conduct 1.7.

49. As counsel for defendant William, Related Non-Party Entity Grant [*and his firm*] has a duty to his client defendant William and to the Court to respond timely and honestly to the Complaint in this action.

50. To do so as counsel for defendant William, Related Non-Party Entity Grant [*and his firm*] must file and

---

[1] Plaintiff contends that paragraph (b)(1) is inapplicable because, in this case, it could *not* be satisfied.

sign a response to the Complaint that includes allegations inconsistent with the position defendant William must assert in the divorce proceeding.[2]

51. Related Non-Party Entity Grant [*and his firm*] has evaded this conflict of interest by aiding and abetting the acts of defendant William in violation of Fed.R.Civ.P. 4(d).

52. Due to the conflict of interest as alleged in paragraph 51 hereof, this Court has the power and the responsibility to disqualify Related Non-Party Entity Grant [*and his firm*] to represent defendant William in this action.

53. If Related Non-Party Entity Grant does not voluntarily withdraw, a proper motion to disqualify will be filed. [pp. 15-16]

At the Scheduling Conference held on November 8, 2006, *Mr. Grant did not withdraw*. Instead, he represented defendant at that hearing and continues as the *only* counsel presently of record for defendant. Accordingly, this Motion to Disqualify is filed as promised by the First Amended Complaint, paragraph 53.

The First Amended Complaint was filed November 3, 2006. Mr. Grant also agreed, at the November 8, 2006 hearing, to file a response to the First Amended Complaint.

At the November 8, 2006 Scheduling Conference, Mr. Grant stated and the Court responded:

MR. GRANT: My client, through his divorce counsel, and Karen [sic-Carin] Brandes, through her divorce counsel, are in the process of trying to resolve all these issues as a matter of the divorce case. That negotiation, as I understand it—I haven't been participating, but I've

---

[2] In fact, Mr. Grant did so at the November 8, 2006 hearing.

certainly been kept up to date. That negotiation has been everything that this proceeding has not been.

And my only request would be that if the Court refers this matter to mediation, that it not be referred until after the divorce negotiations are complete, because I believe that those negotiations will really *resolve all the issues before the Court*. And if there are any issues outstanding at that point, they really will be between Mr. Irons and his daughter, not between him and my client.

THE COURT: Well, that's a fair point. What about that, Mr. Irons? He says basically you're jumping into the middle of ongoing negotiation in a divorce, and bug out until they're finished. [Tr. 21, l. 12 to Tr. 22, l. 4]

Plaintiff responds to this citation from the hearing transcript as follows:

(1) The dispositive "issue[] before *this* Court" in *this* case is whether defendant Brandes *actually owns* the interest he claims in the plaintiff corporation.

Defendant Brandes simply *cannot*, in good faith, "negotiat[e]" that ownership "issue" in his *divorce* case *until* and *unless* that ownership issue is first *decided* in his favor in *this case*. Simply put, defendant's mere claim to ownership of an interest in the corporate plaintiff *cannot* be an *asset* upon which he can rely to procure a favorable divorce ruling.[3]

(2) The fact is that Mr. Grant's argument simply is *not* the "*fair point*" that the Court said it was. Specifically, it is *not* a "fair point" because the issue of whether defendant owns an interest in the plaintiff corporation (an issue that is defined by the pleadings *in this case*) can be resolved *only* by a decision of *this* Court *or* by agreement between the corporate plaintiff and defendant Brandes.

---

[3] Indeed, the Court in the alleged "divorce case" cannot enter a proper decree until and unless it is *fully* informed as to *this* case.

The Court's "fair point" response to Mr. Grant's argument exposes Mr. Grant's representation to be the false statement that it really is.

The *plaintiff LLC* did *not* "jump[] into the middle of ongoing negotiation in a divorce" (Tr. 22, ll. 2-3). The fact is that the plaintiff corporation did *not* know that there was any "ongoing negotiation in a divorce" at the time the complaint was filed on *May 12, 2006*. Defendant's counsel Grant *personally* injected the "divorce" matter into this case by his Opposition to plaintiff's Rule 4(d) Motion, which Opposition he signed and filed on *October 10*, 2006. Mr. Grant's improper purpose, on behalf of his client, was to procure a *de facto* "transfer" of this *Federal* case to some unidentified state or D.C. divorce tribunal which lacks jurisdiction to consider it.

Because the alleged "divorce negotiations" involve the disposition of the *same* assets of plaintiff corporation which defendant Brandes says he owns—assets which the complaint in this case alleges were procured fraudulently by the defendant Brandes—Mr. Grant and his firm, which represents defendant Brandes in his divorce case, are barred by RPC 1.7 from simultaneously acting as counsel for defendant in this case and in the divorce case.

For these reasons, the plaintiff corporation will not "bug out", but will continue o press its claim against defendant in this Federal Court.

The First Amended Complaint alleges:

> 30. In support of this Count 1, plaintiff specifically alleges as follows:
>
> * * *
>
> (ii) Beginning long before and continuing until and after the time of the December 2002 meeting alleged in paragraph 22 hereof and the execution on

March 13, 2003 of the Assignments which are Exhibits 3 and 4 hereof, defendant William knew that *his marriage to Carin was unstable.*[4]

(iii) The *instability* of the Irons-Brandes marriage was a known, material, existing fact that in equity or good conscience should have been disclosed to plaintiff Irons LLC at or before each of the December 2002 meeting and defendant William's execution of the Exhibits 3 and 4 Assignments on March 13, 2003. [Emphasis added.]

Notwithstanding the divorce proceeding, at the November 8, 2006 hearing, defendant's counsel Mr. Grant denied these "marriage" "instability" allegations:

> [MR. GRANT] The essence of the complaint, as I understand it, is that Mr. Brandes knew when the family created this L.L.C. and transferred property interests to it, that Mr. Brandes *knew that his marriage was unstable*, and he fraudulently concealed that fact from Mr. Irons, and that Mr. Irons relied on, I guess, an implied representation that the marriage was stable in allocating property interests to the L.L.C. and in allocating L.L.C. interests to, among other people, Mr. Brandes, the defendant.
>
> Our position is that *none of that is true*. . . . [Tr. 12, ll. 9-18; emphasis added.]

The key point here is that Mr. Grant and his firm cannot be heard to tell the divorce tribunal that the marriage is so unstable that it must be terminated, and, at the same time, tell this Court the *opposite*, namely that the complaint's allegation that defendant's "marriage was unstable" is not "true".

---

[4] The instability of the marriage is conclusively evidenced by the fact that a "divorce" is in progress.

The plaintiff has concurrently served a "First Set of Interrogatories": the verified answers to which may show where the truth lies.

CONCLUSION

The conflict of interest is a matter of record. Mr. Grant and his firm are disqualified as a matter of law as counsel for defendant Brandes in this case.

A proposed Order is attached.

/s/ _____

Edward S. Irons
D.C. Bar No. 149898
Edward S. Irons, P.C.
3945 - 52nd Street, N. W.
Washington, D. C. 20016
(202) 362-5332 - voice
(202) 966-1338 - fax
Tingent@aol.com - email

Attorney for Plaintiff

ATTACHMENT A

[PROPOSED] FINDINGS OF FACT

1. This case is pending before the Court on the First Amended Complaint ("Complaint").

2. Defendant, through counsel (Grant), accepted service of the Complaint at the November 8, 2006 Scheduling Conference.

3. The Complaint alleges:

> 3. This Court has jurisdiction of this case under 28 U.S.C. §1332.
>
> 4. There is complete diversity of citizenship as between the plaintiff and the defendants.
>
> 5. The amount in controversy is in excess of $75,000, excluding interest and costs.

II. THE PARTIES

6. Plaintiff, Irons LLC, is a Limited Liability Corporation organized under the laws of the Commonwealth of Virginia having a registered agent at 707 Prince Street, Alexandria, Virginia 22314.

7. Defendant, William Frederick Brandes ("William"), is an individual who resides at 8075 Lee Haven Road, Easton, Maryland 21601 and at 4201 Cathedral Avenue, N.W., Apartment 416, Washington, D.C. 20016.

8. William is the husband of Carin Irons Brandes ("Carin").

9. Defendant William is in the process of divorcing his wife Carin. Related Non-Party Entity Grant represents defendant William in the divorce proceeding.[1]

10. Carin is the daughter of Edward S. Irons ("Edward"), the Managing Member of plaintiff Irons LLC, and Mary L. Irons ("Mary").

11. Lauren Elizabeth Brandes ("Lauren") is the daughter of William and Carin.

* * *

21. Under the Irons LLC Operating Agreement (Exhibit 2), effective December 16, 2002, Edward is designated as, and at all relevant times has been and is now, the Managing Member of Irons LLC.

4. Exhibit 1 to the Complaint includes a copy of the State Corporation Commission's Certificate of Organization of Irons LLC "Effective date: December 3, 2002".

5. The Irons LLC Operating Agreement (Complaint Exhibit 2) states:

At the November 8, 2006 Scheduling Conference, Grant stated:

> MR. GRANT: I'll do my best, Your Honor. I should call the Court's attention to a first amended complaint that was filed on Friday. That complaint alleges, among other things, that I am representing Mr. Brandes in his divorce case, which is not true. He's represented by another member of my firm. [Tr. 11, 11. 21-25]

There is no formal proceeding; the fact is that William and Carin Brandes are merely negotiating terms of a prospective divorce. The November 8, 2006 transcript states:

> MR. GRANT: My client, through his divorce counsel, and Karen [sic-Carin] Brandes, through her divorce counsel, are in the process of trying to resolve all these issues as a matter of the divorce case. . . . [Tr. 21: ll. 12-15]

SECTION 8
MANAGEMENT OF THE COMPANY'S BUSINESS

A. Edward S. Irons shall be the initial managing member and shall conduct the day-to-day business affairs of the Company to the extent such affairs shall need to be managed.

B. The managing member's powers shall include, but not be limited to, the following:

(1) Entering into, making and performing contracts, agreements and other undertakings binding the Company that may be necessary, appropriate and advisable in furtherance of the purposes of the Company.

(2) Opening and maintaining bank accounts, investment accounts and other arrangements, drawing checks and other orders for the payment of money, and designating individuals with authority to sign or give instructions with respect to those accounts and arrangements. Company funds shall not be commingled with funds from other sources and shall be used solely for the business of the Company.

(3) Collecting funds due to the Company.

(4) Acquiring, utilizing for the Company's purposes, maintaining and disposing of any assets of the Company.[2] [pp. 6-7]

6. The Complaint is signed by Edward S. Irons, Attorney for Plaintiff.

7. The Complaint's jurisdictional allegations are deemed correct for the purpose of this matter.

---

[2] Plaintiff Irons LLC's claim as set forth in the First Amended Complaint is a "Company . . . asset".

8. Defendant's "Opposition to Plaintiff's Motion Under Fed.R.Civ.P. 4(d)" states in part:

III. CONCLUSION

. . . The instant civil action, like its predecessor, merely attempts to litigate in this forum matters best reserved to defendant's divorce case. . . . [p. 5]

9. The "Supplement to Reply in Support of Plaintiff's Motion Under Fed.R.Civ.P. 4(d)" states:

This "Supplement" is filed to inform the Court of facts first learned by plaintiff's counsel at about 1:20 p.m., October 31, 2006. The fact is that defendant, through counsel, has apparently breached Local Civil Rule 11 which states:

* * *

Robert E. Grant, Bar No. 458157, signed and filed "Defendant's Memorandum of Points and Authorities in Opposition to Plaintiff's Motion Under Fed.R.Civ.P. 4(d)" on October 10, 2006. In that document, Mr. Grant states: "Defendant and Carin [his wife] are in the process of divorcing" (Opp. 1).

The "Conclusion" of Mr. Grant's Opposition argues that: "*The instant civil action, like its predecessor, merely attempts to litigate in this forum matters best reserved for defendant's divorce case*" (Opp. 5). [Emphasis added]

Plaintiff's "Reply", after quoting the foregoing passage from Mr. Grant's Opposition, reads: "What divorce case? There is no record in *this case* of defendant's alleged divorce case" (Reply 7; emphasis in original).

Plaintiff's challenge to the integrity of the Opposition is well founded. Plaintiff's counsel requested an investigation to determine if there is any "divorce case". The

investigation determined that *there is no such divorce proceeding pending in the District of Columbia Superior Court.*

The report of the investigation,[3] faxed to Mr. Irons on October 31, 2006, states:

> As per your order you made through Vickie Cummings, I went to conduct the search at DC Superior Court. Unfortunately, there were no results on your search for this divorce proceeding [re: Brandes v. Brandes]. . . .

If there is no "divorce case", then under LCvR 11 "the Court . . . . shall impose . . . an appropriate sanction". In this case, such a "sanction" would at least include an order that grants plaintiff's Rule 4(d) Motion with an award of attorney's fees, including those incurred by a submission of this "Supplement".

10. Because defendant has never disputed the facts set forth in plaintiff's contention that there is no "divorce case" as set forth in the Supplement to the Reply in Support of Plaintiff's Rule 4(d) Motion, the fact that there is no "divorce case" is conceded.[4]

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[3] This investigation was conducted by Westlaw CourtExpress. See Exhibit A hereto.

[4] As noted above, at the November 8, 2006 hearing, Mr. Grant apparently admitted that there is no such "proceeding".

APPENDIX I

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Civil Action No. 1:06CV00904JR

IRONS LLC,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

PLAINTIFF'S MOTION FOR RECUSAL

Plaintiff Irons LLC respectfully invokes Judicial Canons 2, 2A and 3 to request recusal of Judge James Robertson.

JUDICIAL CANONS 2, 2A and 3

Judicial Canons 2, 2A and 3 state:

CANON 2
A JUDGE SHOULD AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN ALL ACTIVITIES

A. A judge should respect and comply with the law and should act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary.

* * *

CANON 3
A JUDGE SHOULD PERFORM THE DUTIES OF THE OFFICE IMPARTIALLY AND DILIGENTLY

EVIDENCE

The respondent's alleged violation of Canons 2, 2A and 3 is evidenced by his statements from the bench during the November 8, 2006 Scheduling Conference. The transcript of that hearing shows that the respondent judge, *prior* to the November 8, 2006 hearing, unilaterally and without notice, *predetermined, inter alia*:

1. That Irons LLC is a faux corporation.

2. That the *real plaintiff party* in interest is *not Irons LLC* —but instead *Edward S. Irons*.

3. In effect, that the Complaint in this case is an abuse of process *because* it was *not* filed to procure the relief set forth in the "Prayer", but instead it was filed for an *improper purpose, i.e.*, by "an angry father getting some revenge for his daughter's divorce" [Tr. 23, ll. 8-10].

4. That the issues in this *Federal* case can be resolved in the said divorce proceeding and, on that false premise, granted defendant's November 8, 2006 oral motion to *defer* any "mediation . . . until after the divorce negotiations are complete" [Tr. 21, ll. 20-21].

The inference invited by predetermined issue 4 above is that the defendant and his wife *inter se* have agreed upon a division of their alleged "assets" as a basis for an amicable divorce, and, hence, that the divorce tribunal can simply implement that agreement in a divorce decree. However, Rule of Professional Conduct 3.3 requires that the divorce court be *fully advised* as to the *issues in this case* as a prerequisite to the entry of *any* divorce decree whatever.

At the Scheduling Conference on November 8, 2006, the Court from the bench stated:

> THE COURT: This looks to me like an ugly family squabble. I don't think it belongs in federal court in the first place. There may be a motion to dismiss for want of

jurisdiction. What is it you want out of this case. Mr. Irons, besides some form of revenge against your son-in-law? [Tr. 9, l. 24 to Tr. 10, l. 3]

* * *

THE COURT: Well, this case doesn't sound like a federal lawsuit to me. I mean, frankly, it's a nice juicy human interest ugly story, and it might make life a lot more interesting for us around here than the ordinary run of federal lawsuits do, but it doesn't belong here. It doesn't belong in any court, as far as I can tell. It sounds to me like this is an angry father getting some revenge for his daughter's divorce. [Tr. 13, ll. 14-20]

* * *

THE COURT: I repeat to both of you, this case I don't think belongs in federal court, but we'll see the motion if we have to see the motion. [Tr. 23, ll. 8-10]

Edward S. Irons states, as plaintiff's counsel, that the record evidence demonstrates at least an appearance of impropriety contrary to Canon 2 and of partiality contrary to Canon 3.

/s/ _____

Edward S. Irons
D.C. Bar No. 149898
Edward S. Irons, P.C.
3945 - 52nd Street, N. W.
Washington, D. C. 20016
(202) 362-5332 - voice
(202) 966-1338 - fax
Tingent@aol.com - email

Attorney for Plaintiff

APPENDIX J

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

[Filed FEB 22, 2007]

CIVIL ACTION NO. 1:06CV0904JR

IRONS LLC,

Plaintiff,

v.

WILLIAM FREDERICK BRANDES,

Defendant.

NOTICE OF APPEAL TO
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Irons LLC, the plaintiff, appeals to the United States Court of Appeals for the District of Columbia Circuit from the final Order of the United States District Court for the District of Columbia entered in this case on February 15, 2007 granting Defendant's Motion to Dismiss and for costs, except for attorney's fees, and denying the following motions filed by plaintiff:

Motion No.	Title	Filed
3	Plaintiff's Motion for Attorney Fees	10/05/06
13	Plaintiff's Motion to Disqualify Counsel	11/24/06
14	Plaintiff's Motion for Recusal	11/24/06

26	Plaintiff's Motion to Enforce D.R. 2-110 (B) (2)	1/10/07
27	Plaintiff's Motion for Sanctions Under D.R. 1-102 (A) (4) and R.P.C. 8.4 (c) and (d)	1/10/07

The parties to the Order appealed from and the names and addresses of their respective attorneys are as follows:

Irons, LLC
Plaintiff
Counsel: Edward S. Irons
3945 - 52nd Street, N. W.
Washington, D. C. 20016

William Brandes
Defendant
Counsel: Robert E. Grant,
Furey, Doolan & Abell, LLP
8401 Connecticut Avenue
Suite 1100
Chevy Chase, Maryland 20815-5803

Dated: February 21, 2007

/s/ Edward S. Irons
EDWARD S. IRONS
D.C. Bar No. 119898
3945 - 52nd Street, N. W.
Washington, D. C. 20016
(202) 362-5332 – voice
(202) 966-1338 – fax
Tingent@aol.com - email
Attorney for Plaintiff

APPENDIX K

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appeal No. 07-7031
NO ORAL ARGUMENT

IRONS LLC,
Plaintiff-Appellant,

v.

WILLIAM FREDERICK BRANDES,
Defendant-Appellee.

Appeal from United States District Court for
District of Columbia Civil Action No. 1:06CV00904JR

APPELLANT'S MOTION UNDER JUDICIAL CANON 3B(2) REQUESTING APPELLATE BRIEFING SCHEDULE

Plaintiff-appellant, Irons LLC, by and through its counsel, Edward S. Irons, moves pursuant to Judicial Canon 3B(2) that an appellate briefing schedule be ordered immediately in this case.

LEGAL STANDARD

Pursuant to Annotated Model Code of Judicial Conduct, the "Preamble" states:

> The Code of Judicial Conduct is intended to establish standards for ethical conduct of judges. . . .
>
> * * *
>
> *The text of the Canons and Sections is intended to govern conduct of judges and to be binding upon them.* . . . [Emphasis added]

Judicial Canon 3B(2) states:

CANON 3B(2)

Professional Competence and Freedom from Partisanship

(2) A judge shall be faithful to the law and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

The Annotation to the Annotated Model Code states:

Denial of Constitutional Rights

Judges must know the limits the Constitution places on their exercise of authority if they are to be "faithful" to the law and show "professional competence" in it. One of the most serious violations of Section 3B(2) occurs when judges deprive parties before the court of one or more of their constitutional rights.

VIOLATION OF CANON 3B(2)

In this case, the trial judge, with no citation of any authority to do so, filed an order that states "defendant's motion to dismiss and for costs [#12] is granted". This appeal followed. The Notice of Appeal was filed February 22, 2007.

Issues 1 and 2 from the "Statement of Issues to be Raised" filed April 6, 2007 are:

1. The appealed decision dismissed the Five Count, First Amended Complaint under Fed.R.Civ.P. 12(b)(6). The issues to be raised include whether any one of the five counts of the First Amended Complaint was correctly dismissed for failure to state a claim.

2. Whether the defendant-appellee, William F. Brandes:

(i) fraudulently procured assignment of an interest in the plaintiff-appellant, Irons LLC, and

(ii) violated the provisions of the Irons LLC Operating Agreement by which he is bound.

On March 7, 2007, the Clerk filed an Order which states, in part: "It is FURTHER ORDERED that briefing in this case is deferred pending further order of the Court". Appellant's repeated requests for a schedule for the filing of briefs on this appeal have all been ignored. The Order which, to date, precludes the filing of appellate briefs violates Canon 3B(2) because it deprives appellant of its Constitutional right to be heard.

This Motion should be urgently considered and granted, in part, by an order that sets an appellate briefing schedule.

/s/ Edward S. Irons
EDWARD S. IRONS
D.C. Bar No. 149898
3945 - 52nd Street, N. W.
Washington, D. C. 20016
(202) 362-5332 - voice
(202) 966-1338 - fax
Tingent@aol.com - email

Attorney for Plaintiff-Appellant

APPENDIX L

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Appeal No. 07-7031
NO ORAL ARGUMENT

IRONS LLC,
Plaintiff-Appellant,

v.

WILLIAM FREDERICK BRANDES,
Defendant-Appellee.

Appeal from United States District Court for
District of Columbia Civil Action No. 1:06CV00904JR

APPELLANT'S PETITION PURSUANT TO
CIRCUIT RULE 35(a) FOR PANEL REHEARING

This Petition seeks panel rehearing of the *Per Curiam* Order filed June 12, 2007. This Petition is timely because it is "within 30 days after entry" of the June 12, 2007 *Per Curiam* Order.

Pursuant to Circuit Rule 35(b), "[a]n original and 4 copies" of this Petition are filed. This Petition conforms to the 15-page limit of Fed.R.Civ.P. 35.

Pursuant to Circuit Rule 35(c),

(1) There is attached to this Petition a copy of the June 12, 2007 *Per Curiam* Order.

(2) A "Certificate as to Parties, Rulings, and Related Cases" was filed under Circuit Rule 28(a)(1)(A) on April 6, 2007. See attached.

(3) A "Disclosure Statement" pursuant to Circuit Rule 26.1 was filed on March 15, 2007. See attached.

REASONS FOR GRANT OF PETITION

These "reasons" are set forth in Parts I to III. Each such "Part" addresses a separate one of several rulings included in the June 12, 2007 *Per Curiam* Order.

PART I

The June 12, 2007 Order states:

> FURTHER ORDERED that the motion to recuse the district court judge be denied. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) ("[J]udicial remarks during the course of a trial that are critical or disapproval of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge.").

The Order conflicts directly with the decision in *Liteky* upon which it erroneously purports to rely. The *Liteky concurring* opinion correctly notes:

> I agree . . . with the Court's *rejection* of the *per se* rule applied by the Court of Appeals, which provides that "matters arising out of the course of judicial proceedings are not a proper basis for recusal" under 455(a). 973 F.2d 910, 910 (CA11 1992). . . . [Underlined emphasis added.]

510 U.S. at 558.

The quoted passage from the June 12, 2007 Order erroneously applies just such a *rejected "per se* rule".

More egregiously, it does so by a cropped quotation from *Liteky*, 510 U.S. at 555. The entirety of the relevant passage at 510 U.S. 555 states:

> Second, opinions formed by the judge on the basis of facts introduced or events occurring in the course of the

current proceedings, or of prior proceedings, do not constitute a basis for a bias or partiality motion unless they display a deep-seated favoritism or antagonism that would make fair judgment impossible. Thus, judicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, *ordinarily* do not support a bias or partiality challenge. They may do so if they reveal an opinion that derives from an extrajudicial source; *and they will do so if they reveal such a high degree of favoritism or antagonism as to make fair judgment impossible.* An example of the latter (and perhaps the former as well) is the statement that was alleged to have been made by the District Judge in *Berger v. United States*, 255 U.S. 22 (1921), a World War I espionage case against German-American defendants: "One must have a very judicial mind, indeed, not [to be] prejudiced against the German Americans" because their "hearts are reeking with disloyalty." *Id.*, at 28. Not establishing bias or partiality, however, are expressions of impatience, dissatisfaction, annoyance, and even anger, that are within the bounds of what imperfect men and women, even after having been confirmed as federal judges, sometimes display. A judge's ordinary efforts at courtroom administration—even a stern and short-tempered judge's ordinary efforts at courtroom administration—remain immune. [Emphasis added..]

Judge Robertson's statements at the November 8, 2006 scheduling conference surely "reveal" a "high degree of favoritism or antagonism as to make fair judgment impossible". *Id.*

PART II

The Order states:

> FURTHER ORDERED that the motion to disqualify Robert E. Grant and for sanctions be denied. Appellant provides no ground for disqualification or for sanctions. . . .

The Order violates due process because it is unfair. The truth is that the Order deprives appellant of any opportunity to be heard on the disqualification issue. The text of the June 12, 2007 Order states "Appellant provides no ground for disqualification or for sanctions". However, the denial of the Motion to Disqualify is a pre-judgment of a motion pending on this appeal as to which appellant is entitled to file a brief. The Motion filed in the District Court shows that Mr. Grant's appearance in this appeal violates Rule of Professional Conduct 1.16(a)(1) which states:

> (a) Except as provided in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if
>
> (1) The representation will result in violation of the Rules of Professional Conduct or other law;

In this case, Mr. Grant's appearance has been shown to violate RPC 1.16(a)(1).

Finally, the cited portion of the Order is improper because it breaches Judicial Canon 3B(2). The Court had no power to recast appellant's "Objection to Entry of Appearance by Grant" as a *motion, i.e.*, a motion which appellant did *not* file, *then deny* the motion that appellant did *not* file as a pretext to deny the motion that appellant *did* file, and thus, in that way, deny appellant's right to an appeal.

PART III

According to the Order, the "motion[] . . . to remand" is "denied" concurrently with the purported "motion[] for summary reversal".

It is noted that the Order cites a *non-existent* "motion[] for summary reversal",[1] styled "Appellant's Motion to Vacate Order Dismissing Civil Action No. 1:06CV00904JR", which non-existent motion the Order purports to deny *because* "[t]he merits . . . are not so clear as to warrant summary action. *See Taxpayers Watchdog, Inc. v. Stanley*, 819 F.2d 294, 297 (D.C.Cir. 1987)". *Taxpayers* is simply a ruling on a motion for summary affirmance. In deciding that issue, *Taxpayers* states: "Summary affirmance requires a conclusion by the court that no benefit will be gained from further briefing and argument". This appears merely to be the same standard as that set forth in D.C. Circuit Handbook Part VIII, "Specific Motions", part G, "Motions for Summary Disposition". In this case, appellant filed *no such motion*.

The *issue* of whether Mr. Grant is barred by RPC 1.16 is *squarely raised* by appellant's Motion to Vacate.

The denial of the motion to remand is *wrong* because it defeats appellant's right to file such a motion as set forth in D.C. Circuit Handbook Section VIII, part E, "Motions for Remand". Canon 3B(1) imposes a duty to "hear and decide matters assigned".

The denial of the motion for remand also conflicts with Canon 3B(2) which requires a judge "be faithful . . . to the law" because the Order is in excess of the judge's authority.

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[1] Appellant filed *no* motion for "summary reversal". The appellant did file a *Motion to Vacate*. The Order which holds that the Motion to Vacate is a motion for summary reversal—which is "denied"—violates Judicial Canon 3B(2) because it is a ruling in excess of authority. *See* "Appellant's *Second* Motion to Vacate Order Dismissing Civil Action No. 1:06CV00904JR" filed concurrently herewith.

CONCLUSION

The June 12, 2007 Order is wrong. It should be vacated.

/s/ Edward S. Irons
EDWARD S. IRONS
D.C. Bar No. 149898
3945 - 52nd Street, N. W.
Washington, D. C. 20016
(202) 362-5332 - voice
(202) 9664338 - fax
Tingent@aolcom - email

Attorney for Appellant

APPENDIX M

UNITED STATES COURT OF APPEALS
FOR THE DICTRICT OF COLUMBIA CIRCUIT

Docket No. 07-7031

IRONS, LLC, a Limited Liability Corporation,
Plaintiff-Appellant,

v.

WILLIAM FREDERICK BRANDES,
Defendant-Appellee.

DOCKET ENTRIES

DATE	PROCEEDINGS
2/28/07	CIVIL-PRIVATE CASE docketed. Notice of Appeal filed by Appellant Irons LLC. [1025824-1] (lvs)
3/7/07	CLERK'S ORDER filed [1026817] directing Appellant to file [1026817-1] : docketing statement due 4/6/07 for Irons LLC ; certificate of counsel due 4/6/07 for Irons LLC ; statement of issues due 4/6/07 for Irons LLC ; lower court decision due 4/6/07 for Irons LLC ; any procedural motions due 4/6/07 for Irons LLC ; transcript status notice due 4/6/07 for Irons LLC ; deferred appendix notice due 4/6/07 for Irons LLC ; entry of appearance form due 4/6/07 for Edward Sterling Irons ; any dispositive motions due 4/23/07 for Irons LLC. Directing Appellee to file [1026817-2] : certificate of counsel due 4/6/07 for William Frederick Brandes ; any procedural motions due 4/6/07 for William

DATE	PROCEEDINGS
	Frederick Brandes ; entry of appearance form due 4/6/07 for Robert E. Grant ; any dispositive motions due 4/23/07 for William Frederick Brandes. [Entry Date: 3/7/07] (lvs)
3/7/07	Letter sent Attorney Non-Member letter. Application for admission—due 5/7/07 for Robert E. Grant. Documents sent: letter aty appl for adm [1027006-1]. (lvs)
3/7/07	Letter sent Attorney Non-Member letter. Application for admission—due 5/7/07 for Edward Sterling Irons. Documents sent: letter aty appl for adm [1027009-1]. (lvs)
3/15/07	MOTION filed (5 copies) by Appellant Irons LLC (certificate of service dated 3/14/07, by Fed Express) to remand case to the district court [1029469-1]. (lvs)
3/15/07	ENTRY OF APPEARANCE filed by Attorney Edward Sterling Irons for Appellant Irons LLC [1029472-1]. (lvs)
3/15/07	STATEMENT filed by Appellant Irons LLC pursuant to FRAP 26.1 providing corporate disclosure listing [1029477-1] Certificate of Service date 3/14/07, by mail. (lvs)
3/19/07	FIRST CLASS MAIL [1031635-1] sent to Edward Sterling Irons RETURNED marked attempted—not known. Mail was in response to a clerk order apet initial submissions [1026817-1]. (krm)
3/21/07	RECORD ON APPEAL filed, one file and one accordian file (tap)

DATE	PROCEEDINGS
3/28/07	ENTRY OF APPEARANCE filed by Attorney Robert Edward Grant for Appellee William Frederick Brandes [1031545-1] . (smc)
3/28/07	OPPOSITION filed [1031727-1] (5 copies) by Appellee William Frederick Brandes (certificate of service by mail dated 3/28/07) to a motion to remand case [1029469-1]. (mam)
4/4/07	MOTION (styled as "OBJECTION TO ENTRY OF APPEARANCE BY GRANT") filed (5 copies) by Appellant Irons LLC (certificate of mail service dated 4/3/07) to term involvement of attorney Grant [1033299-1] and motion for sanctions [1033299-2] . (smc)
4/4/07	REPLY filed [1033301-1] (5 copies) by Appellant Irons LLC (certificate of mail service dated 4/3/07) to Appellee's response to the motion to remand case [1029469-1] . (smc)
4/6/07	NOTICE filed by Appellant Irons LLC FINAL transcript status notice filed [1033775-1] . Transcripts completed. Certificate of service date 4/5/07. (smc)
4/6/07	INITIAL SUBMISSIONS filed by Appellant Irons LLC [1033776-1] : docketing statement; certificate of counsel; statement of issues; lower court decision; deferred appendix notice (De ferred Appendix needed = N); . (smc)
4/23/07	MOTION filed (5 copies) by Appellant Irons LLC (certificate of service dated 4/20/07) to extend time to file [1036437-1] a dispositive motion or brief until ten days after an order on Appellant's motion for remand has been entered. (smc)

DATE	PROCEEDINGS
5/1/07	MOTION lodged (5 copies) by Appellant Irons LLC (certificate of mail service dated 4/30/07) for summary reversal [1038158-1] . (smc)
5/21/07	MOTION (Styled as "Appellant's Motion to Disqualify Trial Judge James Robertson") filed (5 copies) by Appellant Irons LLC (certificate of mail service dated 5/18/07) [1042660-1]. (krm)
6/4/07	OPPOSITION (styled as "MEMORANDUM OF POINTS AND AUTHORITIES IN OPPOSITION TO APPELLANT'S MOTION TO DISQUALIFY TRIAL JUDGE JAMES ROBERTSON") filed [1044926-1] (5 copies) by Appellee William Frederick Brandes (certificate of mail service dated 5/31/07) to Appellant's motion disqualify trial Judge Robertson [1042660-1]. (smc)
6/12/07	PER CURIAM ORDER filed [1046449] of the motion to remand the case to the district court, the opposition thereto, and the reply; the lodged motion for summary reversal (styled "motion to vacate"); the motion to disqualify attorney Robert E. Grant (appellee's counsel) and for sanctions (styled "objection to entry of appearance by Grant"); the motion to recuse the district court judge; and the motion for extension of time to file any dispositive motion or appellant's opening brief until 10 days after an order on the motion to remand has been entered, it is ORDERED that the motion for extension of time to file any dispositive motion be granted [1036437-1]. [Response due on 6/22/07]. The Clerk is directed to file the lodged motion for summary reversal [1038158-1]. It is FURTHER

DATE	PROCEEDINGS
	ORDERED that the motions for summary reversal and to remand be denied [1029469-1] [1038158-1]. It is FURTHER ORDERED that the motion to disqualify Robert E. Grant and for sanctions be denied [1033299-1] [1033299-2]. Appellant provides no grounds for disqualification or for sanctions. It is FURTHER ORDERED that the motion to recuse the district court judge be denied [1042660-1]. [SEE ORDER FOR CITATION/FURTHER DETAILS]. Before Judges Ginsburg, Sentelle, Henderson. [Entry Date: 6/12/07] (lvs)
6/12/07	MOTION filed (5 copies) by Appellant Irons LLC (certificate of service dated 6/11/07) requesting appellate briefing schedule [1046843-1]. (smc)
6/12/07	PER ABOVE ORDER lodged motion for summary reversal [1038158-1] is filed. (sha)
6/20/07	MOTION (styled as "APPELLANT'S SECOND MOTION TO VACATE ORDER DISMISSING CIVIL ACTION NO. 1:06CV00904JR") filed (5 copies) by Appellant Irons LLC (certificate of mail service dated 6/19/07) vacate order [1048559-1] . (smc)
6/20/07	MOTION (styled as "APPELLANT'S PETITION PURSUANT TO CIRCUIT RULE 35(a) FOR PANEL REHEARING") filed (5 copies) by Appellant Irons LLC (certificate of mail service dated 6/19/07) for reconsideration of Per Curiam order filed 6/12/07 [1048561-1] . (smc)

DATE	PROCEEDINGS
6/29/07	OPPOSITION filed [1050904-1] (5 copies) by Appellee William Frederick Brandes (certificate of mail service dated 6/29/07) to Appellant's second motion to vacate [1048559-1] . (smc)
6/29/07	MOTION filed (5 copies) by Appellee William Frederick Brandes (certificate of mail service dated 6/29/07) for sanctions [1050908-1]. Response due on 7/16/07. (smc)
7/5/07	REPLY filed [1051748-1] (5 copies) by Appellant Irons LLC (certificate of mail service dated 7/3/07) to Appellee's a response to the second motion vacate [1048559-1] . (smc)
7/10/07	OPPOSITION filed [1053388-1] (5 copies) by Appellant Irons LLC (certificate of mail service dated 7/9/07) to a motion for sanctions [1050908-1]. MOTION filed for sanctions [1053388-2] "PURSUANT TO CIRCUIT RULE 38 AND RULE OF PROFESSIONAL CONDUCT 8.4." (hts)